

EXHIBIT D

1

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212-267-6868

516-608-2400

	2	4
1	2	1
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16 BY: ELIZABETH MITCHELL, ESQ.	16	16
17	17	17
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19 ALSO PRESENT:	19	19
20 Marc Friedman - Videographer	20	20
21 Aaron Lichtman	21	21
22 Ari Erlichman	22	22
23 Peter Licari	23	23
24 Thomas Crane	24	24
25	25	25
	3	5
1	1	
2 STIPULATIONS	2	
3 IT IS HEREBY STIPULATED AND AGREED, by	3	
4 and among counsel for the respective parties	4	
5 hereto, that the filing, sealing and	5	
6 certification of the within deposition shall be	6	
7 and the same are hereby waived;	7	
8 IT IS FURTHER STIPULATED AND AGREED that	8	
9 all objections, except as to form of the	9	
10 question, shall be reserved to the time of the	10	
11 trial;	11	
12 IT IS FURTHER STIPULATED AND AGREED that the	12	
13 within deposition may be signed before any Notary	13	
14 Public with the same force and effect as if	14	
15 signed and sworn to before the Court.	15	
16	16	
17 * * * *	17	
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24	24	
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	30		32
1	K. McAnaney	1	K. McAnaney
2	Q. Okay. While you were the at the OIG, 10:53:41	2	Q. Okay. And what's the distinction 10:56:49
3	did you -- was it part of your job to prosecute 10:53:46	3	between the phases? 10:56:59
4	healthcare type cases, such as false claims act 10:53:51	4	A. Basically it was a bureaucratic, they 10:57:03
5	cases or AKS cases? 10:53:57	5	could only get -- they promised to get something 10:57:05
6	A. I basically -- was basically -- did a 10:54:00	6	out by such and such a date, and they could. So 10:57:07
7	lot of work with the Justice Department in such 10:54:03	7	we were going to get something out, so we divided 10:57:13
8	cases as sort of the expert in the kickback and 10:54:06	8	it up and said, we'll get this out. So that's 10:57:16
9	the Stark law. 10:54:10	9	the main difference. 10:57:18
10	Q. Okay. So they prosecuted with your 10:54:11	10	Phase I covered certain sections of 10:57:19
11	assistance? 10:54:13	11	the regulations. The definitions and the main 10:57:21
12	A. Yeah, I basically provided subject 10:54:14	12	prohibitions and certain exceptions. And then 10:57:26
13	matter expertise. 10:54:17	13	Phase II did the rest of the exceptions, except 10:57:28
14	Q. Who -- let me ask it this way. 10:54:26	14	for one. And then Phase III, which was supposed 10:57:35
15	In your role at the OIG, did you have 10:54:28	15	to do the last exception, didn't do the last 10:57:38
16	any role in -- excuse me, in identifying cases 10:54:33	16	exception, but instead went back and changed 10:57:40
17	that would be prosecuted by DOJ or any other 10:54:37	17	Phase I and Phase II. 10:57:43
18	offices associated with DOJ? 10:54:43	18	Q. So the different phases covered 10:57:44
19	A. I did. 10:54:48	19	different sections as opposed to various 10:57:47
20	Q. And how would you identify such cases? 10:54:49	20	iterations of the same thing? 10:57:49
21	A. Well, typically, again, they were -- 10:54:53	21	A. Well, except one could argue some of 10:57:51
22	my goal would be in looking specifically at cases 10:55:00	22	Phase III goes back and re-does Phase I and Phase 10:57:54
23	that involved typically the kickback potential 10:55:03	23	II, an important response. But Phase I and Phase 10:57:58
24	violations of the kickback statute or Stark. So 10:55:08	24	II were specifically different sections of the 10:58:00
25	that was -- that's all I did. I don't have 10:55:12	25	regulation. 10:58:03
	31		33
1	K. McAnaney	1	K. McAnaney
2	expertise in -- I try to stay away from billing 10:55:15	2	Q. Were they all published at the same 10:58:03
3	and coding cases. And typically it would come in 10:55:20	3	time? 10:58:05
4	whether through calls from investigators or calls 10:55:24	4	A. No. They were -- the Phase I was in 10:58:05
5	from other OIG attorneys who were assigned to the 10:55:34	5	2001. At least -- yes, Phase I was 2000. And 10:58:14
6	regions. Basically they would divide up, so 10:55:39	6	Phase II was -- I think it may have been after I 10:58:19
7	there would be some OIG attorneys who were sort 10:55:44	7	left. 2004, I think it may have come out. And 10:58:26
8	of paired up with various U.S. Attorneys' Offices 10:55:48	8	then Phase III is 2007; something like that, 10:58:29
9	around the country regions. So when they would 10:55:51	9	perhaps. 10:58:35
10	get notice of potential investigations or claims 10:55:56	10	Q. While you were at OIG, what was your 10:58:40
11	potentially involving the kickback statute or the 10:56:00	11	experience with Pharmacy Services Agreements? 10:58:44
12	Stark statute, they would call me. Attorneys 10:56:05	12	A. Well, I was involved in one case. 10:58:51
13	from the Justice Department, when they got cases 10:56:09	13	Q. And what was that case? 10:58:56
14	that they thought had a potential anti-kickback, 10:56:11	14	A. PharMerica. 10:58:58
15	they would call me. 10:56:14	15	Q. And what was -- other than referring 10:59:00
16	Q. Okay. In one of your reports, there's 10:56:16	16	to it by PharMerica, is there a name of the case? 10:59:07
17	a reference to your participation or you being 10:56:24	17	A. Well, I don't -- it was an 10:59:11
18	the principal author of what I think you referred 10:56:27	18	investigation when I was there. 10:59:15
19	to as the Stark law or the Stark rule-making; 10:56:31	19	Q. Okay. In what time period? 10:59:17
20	correct? 10:56:35	20	A. I think it's -- it was the 10:59:21
21	A. What's called the Stark 2 rule-making 10:56:35	21	investigation that culminated in the settlement. 10:59:22
22	thing. Three phases. Phase I, Phase II and 10:56:39	22	Q. In the settlement in the CIA that's 10:59:28
23	Phase III. And I was principal author of 10:56:43	23	referenced in your various reports? 10:59:31
24	probably Phase I and Phase II. I did some work 10:56:45	24	A. Yes. 10:59:32
25	on Phase III. 10:56:48	25	Q. At what time period were you 10:59:45

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38	40
<p>1 K. McAnaney</p> <p>2 MS. MITCHELL: I don't think 11:05:40</p> <p>3 necessarily because I think that many of 11:05:40</p> <p>4 those facts have been discussed publicly in 11:05:41</p> <p>5 settlement materials. 11:05:46</p> <p>6 MR. MEYER: He obviously can 11:05:47</p> <p>7 assess for himself. I just wanted to make 11:05:48</p> <p>8 sure we weren't crossing the line with any 11:05:50</p> <p>9 privileges or mental impressions. 11:05:54</p> <p>10 THE WITNESS: Yeah. I'm not sure 11:05:56</p> <p>11 at the time I came of what specific facts 11:05:58</p> <p>12 there were. I think -- 'cause I can't -- I 11:06:03</p> <p>13 mean, I believe that sort of the main facts 11:06:13</p> <p>14 that were known at that time were 11:06:22</p> <p>15 essentially the same ones that were 11:06:24</p> <p>16 ultimately in the settlement, but I can't 11:06:26</p> <p>17 recall specifically. 11:06:31</p> <p>18 BY MS. MITCHELL: 11:06:31</p> <p>19 Q. Did -- 11:06:37</p> <p>20 A. By the settlement, the government 11:06:38</p> <p>21 alleged in the settlement in their disclosure. 11:06:40</p> <p>22 Q. Okay. In your reports, and we'll get 11:06:45</p> <p>23 more into those later, you indicate that in -- in 11:06:48</p> <p>24 reaching your conclusions in this case and in 11:06:57</p> <p>25 preparing for report, you collected some 11:06:59</p>	<p>1 K. McAnaney</p> <p>2 whether a violation of the Anti-Kickback Statute 11:08:35</p> <p>3 had occurred? 11:08:39</p> <p>4 A. No. At that point, it was a matter 11:08:41</p> <p>5 under investigation. 11:08:44</p> <p>6 Q. Okay. I may come back to your role at 11:08:45</p> <p>7 the OIG and some of your experiences there -- 11:08:57</p> <p>8 well, before we leave there, one last question. 11:09:01</p> <p>9 I think we started talking about the Hollins 11:09:03</p> <p>10 Manor case, because I asked you as to what your 11:09:04</p> <p>11 experiences were, or if you had experiences at 11:09:11</p> <p>12 the DOJ with the Pharmacy Services Agreements and 11:09:13</p> <p>13 you identified this situation. 11:09:17</p> <p>14 Were there other experiences that you 11:09:18</p> <p>15 had while at OIG with Pharmacy Services 11:09:20</p> <p>16 Agreements? 11:09:25</p> <p>17 A. I can't recall. 11:09:26</p> <p>18 Q. Is it fair to say, then, that if by 11:09:29</p> <p>19 chance you did, you were not relying on those 11:09:32</p> <p>20 experiences in connection with the issuance of 11:09:35</p> <p>21 your opinion in this case? 11:09:37</p> <p>22 A. Yes. Certainly I -- I do not believe 11:09:39</p> <p>23 I had any -- I was ever involved in any other 11:09:44</p> <p>24 investigations involving Pharmacy Services 11:09:47</p> <p>25 Agreements. What I don't know is whether in the 11:09:49</p>
39	41
<p>1 K. McAnaney</p> <p>2 documents on your own and you did some 11:07:02</p> <p>3 investigation, including a four-year request. 11:07:04</p> <p>4 And you've referenced some of these 11:07:06</p> <p>5 publicly-available materials that talk about the 11:07:09</p> <p>6 situation with -- and I want to say it's Hollis 11:07:13</p> <p>7 or Hollins Manor. 11:07:17</p> <p>8 A. That might be HCM. That rings a bell. 11:07:21</p> <p>9 Q. But this particular situation that 11:07:24</p> <p>10 we're talking about. 11:07:26</p> <p>11 In forming your opinions in this case 11:07:28</p> <p>12 that brings us here today, did you rely 11:07:31</p> <p>13 exclusively on the materials that you recently 11:07:38</p> <p>14 collected, or are you also relying upon some of 11:07:43</p> <p>15 your memories and your experience, your personal 11:07:48</p> <p>16 experience in that prior investigation? 11:07:52</p> <p>17 A. No. I'm relying exclusively on the 11:07:57</p> <p>18 public information that's available on that case, 11:08:00</p> <p>19 and the general knowledge of the kickback statute 11:08:05</p> <p>20 and how it's applied to various fact patterns. 11:08:07</p> <p>21 Q. Okay. In connection with -- I'm not 11:08:11</p> <p>22 sure I have this name 100 percent accurate, but 11:08:21</p> <p>23 if we can agree that we'll refer to it as the 11:08:24</p> <p>24 Hollins Manor case for clarity of the record, in 11:08:26</p> <p>25 that situation, did you reach a conclusion as to 11:08:32</p>	<p>1 K. McAnaney</p> <p>2 advisory role, if people called, if we ever 11:09:54</p> <p>3 discussed them. 11:09:58</p> <p>4 Q. And I'm not trying to trip you up. 11:09:58</p> <p>5 I'm just trying to figure out really what formed 11:10:02</p> <p>6 the opinions that you're providing in this case, 11:10:04</p> <p>7 and if there's nothing else that you can think of 11:10:06</p> <p>8 that you relied upon from your own past 11:10:10</p> <p>9 experiences that arose from your time at OIG. 11:10:13</p> <p>10 MR. MEYER: Objection. 11:10:17</p> <p>11 BY MS. MITCHELL: 11:10:17</p> <p>12 Q. That's what I'm trying to establish. 11:10:18</p> <p>13 MR. MEYER: Objection, form. 11:10:21</p> <p>14 THE WITNESS: Nothing -- nothing 11:10:22</p> <p>15 specifically with Pharmacy Service 11:10:23</p> <p>16 Agreements. Obviously my experience at OIG. 11:10:25</p> <p>17 BY MS. MITCHELL: 11:10:30</p> <p>18 Q. Understood. When -- I think you said 11:10:31</p> <p>19 you left OIG in 2003; is that correct? 11:10:35</p> <p>20 A. Yes. 11:10:38</p> <p>21 Q. What did you do when you left OIG? 11:10:39</p> <p>22 A. I went into private practice. 11:10:41</p> <p>23 Q. And why did you leave OIG? 11:10:42</p> <p>24 A. Because I was bored and -- I was bored 11:10:45</p> <p>25 with the job I had. There were jobs I would have 11:10:49</p>

<p style="text-align: center;">114</p> <p>1 K. McAnaney 2 between the former owners of the Pittsburg SNF's 15:00:53 3 and PharMerica East -- well, can I say between 15:01:01 4 PharMaster -- no, between -- between the former 15:01:04 5 owners of the Pittsburg SNF's and PharMerica 15:01:10 6 East, I think those contracts would still be 15:01:14 7 unenforceable against the plaintiffs. 15:01:20 8 Q. Mr. McAnaney, is the Stark law 15:01:31 9 implicated in this case? 15:01:34 10 A. I don't believe so. 15:01:37 11 Q. Do you have a view as to whether 15:01:42 12 Pharmacy Services Agreements are, per se, legal 15:01:44 13 or illegal? 15:01:49 14 A. I think depending on the 15:01:53 15 circumstances, they can be either, but I mean, 15:01:55 16 they're typically legal, I presume. 15:02:01 17 Q. Okay. But in this instance, you're 15:02:04 18 taking the position that the PSA's are not legal; 15:02:10 19 is that correct? 15:02:14 20 A. Well, I think that they are -- it's 15:02:15 21 sort of not -- the contracts themselves become 15:02:18 22 illegal because they're part of an illegal 15:02:22 23 transaction. So I don't really think -- the 15:02:25 24 contract itself, in its four corners, might be 15:02:30 25 legal or illegal in some circumstances. But in 15:02:36</p>	<p style="text-align: center;">116</p> <p>1 K. McAnaney 2 independent parties, I think it would be. 15:03:52 3 BY MS. MITCHELL: 15:03:54 4 Q. What is it about the underlying 15:03:57 5 transaction, or the facts and circumstances here 15:04:00 6 that makes you think that there's an issue 15:04:04 7 implicating the Anti-Kickback Statute? 15:04:06 8 A. I think because the PSA's in this case 15:04:11 9 were a conduit to mask the payment for -- the 15:04:15 10 payment to the Pittsburg SNF prior owners of 15:04:23 11 remuneration for the referrals of the Pittsburg 15:04:30 12 SNF facilities. 15:04:33 13 Q. And what was the remuneration? 15:04:34 14 A. I believe it is 20.5 million dollars. 15:04:38 15 Q. And the referrals are what? Let me 15:04:42 16 back up? 15:04:45 17 So the remuneration is the 20.5 15:04:45 18 million dollars paid by PharMerica to the prior 15:04:49 19 owners of PharMaster? 15:04:53 20 A. Who were also the prior owners of the 15:04:57 21 Pittsburg SNF's. 15:05:00 22 Q. But that's the remuneration that -- 15:05:01 23 A. Yes. 15:05:03 24 Q. -- you're looking at? 15:05:03 25 A. Yes. 15:05:04</p>
<p style="text-align: center;">115</p> <p>1 K. McAnaney 2 the circumstances presented here, I think it is 15:02:40 3 illegal, and -- it's part of an illegal 15:02:43 4 transaction and it is; therefore, unenforceable. 15:02:47 5 Q. Mr. McAnaney, have you evaluated 15:02:50 6 whether -- if you took -- if you removed -- if 15:02:53 7 you just looked at the four corners of the PSA's 15:02:58 8 and you looked at the arrangement between the 15:03:01 9 plaintiffs, each individual plaintiff and 15:03:05 10 PharMerica, is there anything that strikes you as 15:03:07 11 to their relationship with one another directly 15:03:10 12 that presents an issue in terms of the 15:03:15 13 Anti-Kickback Statute? 15:03:18 14 A. Well, I mean, well, I don't think you 15:03:21 15 could look at the contract within the four 15:03:27 16 corners. I mean, if you just looked at the four 15:03:28 17 corners of the contract and only knew that, and 15:03:30 18 that was all there was, I think -- I mean, the 15:03:33 19 natural assumption would be it would be awful. 15:03:36 20 Q. Okay. And I'm going to work you 15:03:39 21 through everything else, but presumptively a 15:03:40 22 Pharmacy Services Agreement is lawful unless 15:03:44 23 something else is going on? 15:03:47 24 MR. MEYER: Objection, form. 15:03:48 25 THE WITNESS: Yeah, between two 15:03:51</p>	<p style="text-align: center;">117</p> <p>1 K. McAnaney 2 Q. Okay. And then what are the resulting 15:05:05 3 referrals that you contend arose out of this 15:05:10 4 payment? 15:05:15 5 A. Any of the business that came out of 15:05:16 6 those SNF's, whether it was Part A, Part D. I 15:05:21 7 think it was a kickback for some of the 15:05:25 8 commercial business. I mean, it just -- 15:05:28 9 generally, a pharmaceutical business out of those 15:05:29 10 SNF's. 15:05:36 11 Q. In setting forth your opinions, you 15:05:37 12 talk about what -- some terms of the PSA's that 15:05:38 13 you focused on, and one of those terms is the 15:05:42 14 term length. 15:05:47 15 Why is it that you have an issue with 15:05:49 16 the term length? 15:05:56 17 A. Well, frankly, it's just evidence that 15:05:59 18 these were out of the ordinary contracts. These 15:06:03 19 are outlier or lengths of term. But, again, all 15:06:09 20 these things are just evidence of the underlying 15:06:16 21 transaction, which was the sale of that pharmacy 15:06:18 22 referral business. But -- so the term is one 15:06:23 23 factor. It's been indicated before. 15:06:27 24 Q. So let me just make sure I understand 15:06:29 25 you. 15:06:31</p>

<p style="text-align: right;">118</p> <p>1 K. McAnaney 2 Is it fair to say that term length -- 15:06:31 3 a 10-year term length, in and of itself, doesn't 15:06:38 4 constitute a violation of the Anti-Kickback 15:06:42 5 Statute? 15:06:44 6 A. No. 15:06:45 7 Q. Are you familiar with -- you talked 15:06:46 8 about earlier that you have some familiarity with 15:06:49 9 Pharmacy Services Agreements. 15:06:53 10 What are the term lengths contained 15:06:57 11 within those Pharmacy Services Agreements? 15:06:59 12 A. Well, I mean typically the ones I saw 15:07:02 13 were generally -- I think when I first started 15:07:05 14 looking at them, they were probably in the one 15:07:08 15 year length, cancelable on -- with or without 15:07:11 16 cause for, you know, 60, 90, 180 days notice. 15:07:15 17 And then I think they tended to lengthen out, and 15:07:22 18 I'd say the more recently, in the three-year, 15:07:28 19 four-year, maybe five-year. 15:07:32 20 Q. Term length? 15:07:36 21 A. Term lengths, again, typically -- 15:07:37 22 typically the ones I'm familiar with were 15:07:40 23 cancelable, again, without cause with a certain 15:07:42 24 amount of notice. 15:07:47 25 Q. Okay. So over the course of your 15:07:49</p>	<p style="text-align: right;">120</p> <p>1 K. McAnaney 2 something like that. 15:09:17 3 Q. Is there anything that would make it 15:09:17 4 unlawful that you're aware of for someone to have 15:09:19 5 a PSA that's ten years in length? 15:09:22 6 A. No, not if all the other circumstances 15:09:26 7 surrounding it are fine. 15:09:28 8 Q. Are you aware that there are, in fact, 15:09:30 9 some long-term care pharmacies that have 15-year 15:09:33 10 PSA's? 15:09:36 11 A. I found that out recently. 15:09:38 12 Q. And is there anything about a 15-year 15:09:39 13 PSA, in and of itself, that gives you pause in 15:09:42 14 terms of implications it may have on the 15:09:47 15 Anti-Kickback Statute? 15:09:51 16 A. Well, yes. I mean, if I came across 15:09:52 17 it, I would -- I would examine it closely. 15:09:55 18 Q. What types of things would you 15:10:01 19 examine? 15:10:02 20 A. I mean, find out who the parties were. 15:10:03 21 Under what circumstances it was done. How -- 15:10:06 22 what's the reason that it's of that length. I 15:10:08 23 mean, it's an outlier. 15:10:12 24 Q. And maybe a good way to ask this is, 15:10:14 25 is being an outlier illegal? 15:10:17</p>
<p style="text-align: right;">119</p> <p>1 K. McAnaney 2 experience, term lengths have trended to be 15:07:51 3 longer; is that correct? 15:07:55 4 A. I think they changed with changes in 15:07:58 5 the Medicare law and the requirements for nursing 15:08:03 6 homes and pharmaceutical coverage, so, yes, I 15:08:08 7 think they've tended to increase somewhat to the 15:08:13 8 three and five-year. 15:08:17 9 Q. Okay. Just to make sure I understand 15:08:19 10 correctly, there's nothing in the Anti-Kickback 15:08:21 11 Statute that says that if you've got a PSA that's 15:08:22 12 "X" number of years, that's okay, but if you have 15:08:27 13 one that's "Y" number of years, that's a problem? 15:08:29 14 A. That's correct. That's not in the 15:08:34 15 Kickback Statute. 15:08:36 16 Q. Are you aware of Pharmacy Services 15:08:38 17 Agreements other than the ones involved in this 15:08:40 18 case that are ten years in length? 15:08:44 19 A. I am -- I am -- I am not. I do 15:08:51 20 notice -- I mean, I've reviewed the data supplied 15:08:54 21 by PharMerica that showed that I think that they 15:08:59 22 don't have any contracts at that length. That 15:09:01 23 they are basically -- the bulk of their contracts 15:09:04 24 are, I think, overwhelmingly about half, under 15:09:08 25 three. Maybe another big chunk under five; 15:09:13</p>	<p style="text-align: right;">121</p> <p>1 K. McAnaney 2 A. No, not necessarily. 15:10:23 3 Q. In addition to term length, you talked 15:10:27 4 also about termination provisions, and you just 15:10:32 5 referenced a couple here. 15:10:39 6 What do you think is unusual about the 15:10:41 7 termination provisions contained in the PSA's 15:10:42 8 involved in this case? 15:10:46 9 A. I think the combination -- it's more 15:10:47 10 the combination. I mean, again, typically I 15:10:50 11 think termination -- the only termination for 15:10:53 12 cause in PSA's -- in the PSA's I reviewed is 15:10:56 13 relatively unusual. I think it's the combination 15:11:01 14 of a 10-year term with how the ability to 15:11:06 15 terminate a but for clause. And then -- 15:11:10 16 Q. I'm sorry; you find that unusual or 15:11:14 17 you find that illegal? 15:11:16 18 A. I find that most unusual and 15:11:18 19 potentially illegal, depending on the 15:11:21 20 circumstances. 15:11:23 21 Q. And what about -- let me ask you this, 15:11:26 22 Mr. McAnaney. 15:11:32 23 Is there anything wrong or unlawful 15:11:33 24 about wanting to have a long-term agreement? 15:11:34 25 A. No, not at all. 15:11:38</p>

<p style="text-align: center;">122</p> <p>1 K. McAnaney 2 Q. Is there anything wrong or unlawful 15:11:39 3 about wanting to have an agreement that is 15:11:41 4 terminable only with cause? 15:11:45 5 A. No. 15:11:48 6 Q. In reaching your opinions, did you 15:11:57 7 have the occasion to speak to anybody who has 15:11:59 8 familiarity with negotiating PSA's in the current 15:12:08 9 market? 15:12:13 10 A. No, not specifically. 15:12:18 11 Q. If I were to tell you, or if someone 15:12:22 12 were to tell you that it's actually quite common 15:12:25 13 to have with cause termination provisions, would 15:12:28 14 that change your opinions in this case at all? 15:12:33 15 A. It would -- well, no, it wouldn't 15:12:37 16 change my opinion in this case, but, again, it 15:12:40 17 would -- I mean, even so, I think it would depend 15:12:43 18 on how long the term in conjunction with the 15:12:46 19 termination provisions are, I think the most 15:12:51 20 salient factor. 15:12:57 21 Q. And why does that matter? 15:12:58 22 A. Because it's unusual. It's very 15:12:59 23 unusual to tie yourself in for that length of 15:13:01 24 time for a cause, knowing what I know about 15:13:04 25 the industry. I mean, I just think that would be 15:13:08</p>	<p style="text-align: center;">124</p> <p>1 K. McAnaney 2 Q. So a nursing home operator or owner 15:14:24 3 can't write a prescription? 15:14:27 4 A. No. 15:14:28 5 Q. So they don't control -- 15:14:29 6 A. I don't think they can, but there may 15:14:31 7 be some -- well, there are some that are doctors, 15:14:32 8 but -- 15:14:34 9 Q. Okay. Aside from that. But A 15:14:35 10 physician is -- needs to write a prescription? 15:14:37 11 A. Yes. 15:14:40 12 Q. Is the prescription the actual 15:14:42 13 referral? 15:14:44 14 A. No. Well, I mean, yes, it is. 15:14:45 15 Q. Literally. 15:14:49 16 A. It isn't the only referral. 15:14:50 17 Q. And what would other referrals be? 15:14:52 18 A. Well, I think the nursing home 15:14:55 19 entering into an exclusive agreement is very 15:14:56 20 commonly understood in the Healthcare Bar and 15:15:02 21 certainly by the Federal Government, that 15:15:05 22 hospitals can refer patients. It doesn't require 15:15:08 23 a doctor, if you basically can control or 15:15:11 24 influence substantially the referral of 15:15:16 25 healthcare business, or the awarding of services 15:15:20</p>
<p style="text-align: center;">123</p> <p>1 K. McAnaney 2 very unusual. 15:13:11 3 Q. If I'm a nursing home owner or 15:13:12 4 operator, and I have negotiated what I think is a 15:13:15 5 very good Pharmacy Services Agreement on my 15:13:21 6 behalf, is there anything wrong with me, as a 15:13:24 7 nursing home provider, wanting to lock that 15:13:26 8 agreement in for an extended period of time? 15:13:28 9 A. Well, I mean, it would depend on the 15:13:33 10 circumstances. You know, if it's an arm's length 15:13:37 11 and -- I think it can be legal. I think it can 15:13:40 12 be illegal in some circumstances. 15:13:44 13 Q. Depending on whether some form of 15:13:46 14 remuneration is paid in exchange for any 15:13:50 15 referrals that I may have? 15:13:53 16 A. Yeah. I think it's pretty commonly 15:13:56 17 understood that nursing home operators can't 15:13:58 18 charge for a PSA. They can't receive money for a 15:14:04 19 PSA. 15:14:09 20 Q. Okay. Who -- in the nursing home 15:14:11 21 setting, who authorizes prescriptions? 15:14:14 22 MR. MEYER: Objection, form. 15:14:22 23 THE WITNESS: Well, physicians 15:14:23 24 write prescriptions. 15:14:23 25 BY MS. MITCHELL: 15:14:24</p>	<p style="text-align: center;">125</p> <p>1 K. McAnaney 2 that are reimbursed under that by federal 15:15:25 3 healthcare. That that is sufficient. It doesn't 15:15:27 4 have to be a referral in the sense of a doctor 15:15:30 5 writing on a prescription, you go there. 15:15:36 6 Q. Are you familiar with the patient 15:15:39 7 choice laws in Texas? 15:15:42 8 A. No. 15:15:43 9 Q. Are you aware that under the Pharmacy 15:15:45 10 Services Agreements, that the patients are 15:15:47 11 actually afforded the ability to choose their 15:15:51 12 pharmacy? 15:15:56 13 A. Yes. 15:15:57 14 MR. MEYER: Objection, form. 15:15:57 15 THE WITNESS: Yes, I am. 15:15:59 16 BY MS. MITCHELL: 15:15:59 17 Q. Do you have an understanding as to how 15:16:02 18 many patients or residents within the plaintiffs' 15:16:05 19 nursing homes or SNF's utilize PharMerica versus 15:16:10 20 some other pharmacy? 15:16:17 21 A. I believe I've seen an exhibit or a 15:16:21 22 document that I'm not quite sure what it shows, 15:16:25 23 but I think it has some utilization by homes at 15:16:28 24 some point in time for some basis. 15:16:37 25 Q. If you're unsure what the document 15:16:39</p>

<p style="text-align: right;">134</p> <p>1 K. McAnaney 2 says that they'll do anything. They'll write 15:28:40 3 whatever terms they want. 15:28:43 4 Q. Is there anything, per se, illegal 15:28:44 5 about a -- for a nursing home chain to open and 15:28:47 6 develop its own pharmacy? 15:28:58 7 A. No. 15:29:02 8 Q. Is there anything, per se, illegal 15:29:03 9 about that same nursing home owner or operator 15:29:05 10 later selling any such pharmacy? 15:29:09 11 A. That's a good question. I think 15:29:17 12 there -- I think there might be. 15:29:20 13 Q. So is it your opinion that it's not 15:29:24 14 possible to legally sell a captive pharmacy, to 15:29:28 15 use your language? 15:29:33 16 A. I'm saying it's -- I think it's 15:29:34 17 arguable whether you can do it. For more than -- 15:29:38 18 for more than the hard assets. 15:29:46 19 Q. In the acquisition that we discussed 15:29:52 20 earlier today in connection with your work at 15:29:53 21 Dewey Ballantine, was that captive pharmacy 15:29:56 22 eventually sold? 15:30:00 23 A. I can't recall, but I believe it was. 15:30:02 24 Q. Okay. Are you aware of -- with your 15:30:04 25 work in the industry, other captive pharmacies 15:30:08</p>	<p style="text-align: right;">136</p> <p>1 K. McAnaney 2 pharmacies have occurred without incurring 15:31:21 3 liability under the Anti-Kickback Statute, as far 15:31:25 4 as you're aware? 15:31:28 5 A. I mean, some have and some have not. 15:31:28 6 Q. Okay. But I'm trying to figure out 15:31:31 7 whether they can occur. 15:31:33 8 A. I mean, they do occur, yes. 15:31:37 9 Q. Without running afoul of the 15:31:41 10 Anti-Kickback Statute? 15:31:43 11 A. That, as I said, I think that's -- I 15:31:44 12 don't -- I mean, I don't think there's ever been 15:31:49 13 a determination. 15:31:51 14 Q. And circling back, I digressed a 15:32:00 15 little bit there, you are not able to tell us 15:32:02 16 what increase in value you think occurred as a 15:32:10 17 result of various changes to the PSA's in this 15:32:13 18 case? 15:32:17 19 A. Well, beyond what I said, which is the 15:32:19 20 facts indicate that prior to the changes, they 15:32:21 21 had no bids. 15:32:25 22 Q. Okay. Are you able to do -- tell me 15:32:30 23 the converse as to what PharMaster would have 15:32:38 24 been worth without the addition of these terms? 15:32:42 25 A. Well, as I said, I can only go from -- 15:32:46</p>
<p style="text-align: right;">135</p> <p>1 K. McAnaney 2 that have been bought and sold? 15:30:10 3 A. Yes. 15:30:12 4 Q. Okay. Were you aware of such sales 15:30:12 5 while you were at the OIG? 15:30:17 6 A. Yes. 15:30:20 7 Q. And at that point in time, did they -- 15:30:21 8 were they investigated? 15:30:27 9 A. I really wasn't involved in all the 15:30:31 10 investigations. I couldn't tell you. I was not 15:30:32 11 aware of any investigations other than -- 15:30:35 12 Q. The one that we talked about earlier 15:30:39 13 today? 15:30:41 14 A. The one that we talked about. 15:30:41 15 Q. Are you aware of situations where 15:30:43 16 captive pharmacies have been bought and sold 15:30:45 17 without resulting in an accusation by the 15:30:48 18 government that a violation of the Anti-Kickback 15:30:55 19 Statute occurred? 15:30:57 20 A. Transactions occur all the time that 15:31:01 21 don't get challenged. I don't think that says 15:31:03 22 anything, but -- so maybe the answer -- I believe 15:31:05 23 it's no. I believe it's no. I'd have to go -- 15:31:11 24 Q. Let me see if I can rephrase that. 15:31:16 25 That the purchase or sale of captive 15:31:19</p>	<p style="text-align: right;">137</p> <p>1 K. McAnaney 2 the evidence in the record was nobody was 15:32:48 3 interested in buying it. 15:32:53 4 Q. Are you aware that the owners of 15:32:54 5 PharMaster had reached out to Houlihan Lokey, an 15:32:58 6 investment bank and advisor regarding the sale of 15:33:03 7 PharMaster? 15:33:07 8 A. Yes. 15:33:08 9 Q. Are you aware that in their role, 15:33:08 10 Houlihan Lokey undertook a valuation of 15:33:13 11 PharMaster? 15:33:23 12 A. Yes. 15:33:23 13 Q. What do you know about that valuation? 15:33:24 14 A. Well, let me say, I think the 15:33:26 15 testimony's a bit -- I don't think they actually 15:33:28 16 did a valuation. They seemed to distinguish 15:33:30 17 between a valuation -- they had a valuation 15:33:33 18 department, and then some calculation which they 15:33:37 19 looked at a possible sales price. So I'm not 15:33:40 20 sure that they would even call it a valuation as 15:33:43 21 I read the deposition. 15:33:46 22 Q. Okay. Do you remember what the sale 15:33:47 23 price was that they suggested to Mr. Licari and 15:33:49 24 Mr. D'Arcangelo would be an appropriate sales 15:33:57 25 price? 15:33:59</p>

<p style="text-align: center;">138</p> <p>1 K. McAnaney 2 A. Not specifically, but I believe it was 15:34:02 3 20 to 24 million. 22 to 24; something in that 15:34:06 4 range, I believe. 15:34:10 5 Q. And do you remember when they conveyed 15:34:11 6 that information? 15:34:14 7 A. Yeah, when they first -- I think it 15:34:16 8 was early on in their engagement. 15:34:20 9 Q. Was it before -- do you know whether 15:34:23 10 it was before any terms of the PSA's were 15:34:24 11 changed? 15:34:27 12 A. Yes. 15:34:28 13 Q. And so by yes, yes it was or yes, you 15:34:31 14 know -- 15:34:34 15 A. Yes, I know it was. 15:34:35 16 Q. Okay. And after the PSA's were 15:34:36 17 changed, do you know if they changed their view 15:34:40 18 on what a good price would be? 15:34:43 19 A. I'm sorry; I'm getting confused. Can 15:34:50 20 you read back the question? I'm getting into was 15:34:53 21 I aware of -- 15:34:58 22 (Whereupon the reporter read back 15:35:00 23 the requested portion of the record.) 15:35:00 24 THE WITNESS: My recollection is 15:35:16 25 they did not significantly change the price. 15:35:16</p>	<p style="text-align: center;">140</p> <p>1 K. McAnaney 2 Q. Do you know what they considered in 15:36:57 3 undertaking that valuation? 15:37:01 4 A. Well, in the valuation specifically, 15:37:07 5 no. 15:37:15 6 Q. Do you know if other parties expressed 15:37:24 7 an interest in purchasing PharMaster? 15:37:28 8 A. As a standalone company? 15:37:37 9 Q. Yes. 15:37:38 10 A. Omnicare. And I can't recall any 15:37:47 11 others that looked at it as a standalone. 15:37:50 12 Q. Would it matter to you whether others 15:37:54 13 did look at it? 15:37:58 14 A. I mean, not particularly. I mean, I 15:38:01 15 don't think it affects the analysis. 15:38:04 16 Q. Would it matter to you if other 15:38:09 17 entities offered a particular price for 15:38:11 18 PharMaster? 15:38:19 19 A. Well, it might factor in on some 15:38:21 20 aspect of the report, but the fact that other 15:38:24 21 people might offer the same kind of price for the 15:38:29 22 same -- for locking up the same referrals doesn't 15:38:37 23 matter to me particularly. 15:38:41 24 Q. So do you think anybody could have 15:38:44 25 purchased PharMaster without running afoul of the 15:38:46</p>
<p style="text-align: center;">139</p> <p>1 K. McAnaney 2 BY MS. MITCHELL: 15:35:19 3 Q. Okay. I'm having trouble 15:35:20 4 understanding if Houlihan Lokey, an independent 15:35:21 5 third-party, says the value is 20 to 24 million, 15:35:25 6 and PharMerica later comes in and pays within 15:35:28 7 that range, why that then constitutes a violation 15:35:32 8 of the Anti-Kickback Statute? 15:35:36 9 A. Well, because it depends on the 15:35:39 10 intent. But the point is -- well, it depends on 15:35:41 11 the intent. Fair market value doesn't 15:35:46 12 necessarily have anything to do with anything. 15:35:50 13 Q. Do you have an opinion as to whether 15:35:52 14 PharMerica paid fair market value for PharMaster? 15:35:54 15 A. Well, I think -- I assume they paid 15:35:59 16 fair market value for the referral stream that 15:36:03 17 they bought. 15:36:08 18 Q. Explain what you mean by that. 15:36:09 19 A. Well, I think what -- I think they 15:36:10 20 paid fair market value for a lockup of ten years 15:36:14 21 of the referrals from the 35 nursing homes. 15:36:17 22 Q. Do you know whether PharMerica 15:36:47 23 conducted their own independent valuation of 15:36:49 24 PharMaster? 15:36:52 25 A. I believe they did. 15:36:54</p>	<p style="text-align: center;">141</p> <p>1 K. McAnaney 2 Anti-Kickback Statute? 15:38:51 3 A. Yes. 15:38:54 4 Q. What would have needed to happen? 15:38:57 5 A. I think if someone -- if they had been 15:38:59 6 able to -- if they had sold it for the contracts 15:39:01 7 in place on January -- the original 2006 15:39:05 8 contracts in place. I think someone could come 15:39:13 9 in and buy there, and I think that's probably a 15:39:16 10 relatively safe transaction, although as I would 15:39:20 11 say, it's arguable that they might not even do 15:39:23 12 that, be able to do that. But one could question 15:39:27 13 that under the statute, but I think that's 15:39:31 14 probably okay. 15:39:32 15 Q. Would it matter to you if they paid 15:39:39 16 more or less than 20.5 million dollars? 15:39:40 17 A. I'm not sure of the question. Buying 15:39:48 18 the 2006? 15:39:54 19 Q. Yes. 15:39:55 20 A. I mean, I don't -- I think in that 15:39:58 21 case -- I mean, it might. I'm not quite sure. I 15:40:00 22 mean, it might, yes. 15:40:14 23 Q. Could somebody buy a captive pharmacy 15:40:15 24 for more than the value of the tangible assets 15:40:19 25 without implicating the Anti-Kickback Statute? 15:40:21</p>

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1	K. McAnaney	1	K. McAnaney
2	Do you have an understanding as to 15:58:20	2	was directly tied to inclusion of that provision, 16:16:06
3	when PharMerica an PharMaster actually began 15:58:21	3	that one particular provision. 16:16:11
4	discussing and negotiating the acquisition of 15:58:24	4	A. Can you point me to exactly where this 16:16:14
5	PharMaster by PharMerica? 15:58:28	5	section you're referring? 16:16:18
6	A. Well, yeah, I believe by the record, 15:58:32	6	Q. Where liquidated damages begins on 16:16:21
7	that active negotiations began some time after 15:58:35	7	Page 7, but let's back up without reference to 16:16:24
8	March 28th. I think March 28th might have been 15:58:39	8	the report. 16:16:26
9	the kickoff. 15:58:41	9	Is it your opinion that the increase 16:16:27
10	Q. Do you know what information 15:58:45	10	in PharMerica's offer from 17 million to 20.5 16:16:34
11	PharMerica had about PharMaster prior to 15:58:47	11	million was directly tied to the inclusion of 16:16:38
12	March 28th? 15:58:50	12	liquidated damages language in the PSA? 16:16:43
13	MR. MEYER: Objection, form. 15:58:50	13	A. They appear to be related. Whether 16:16:51
14	THE WITNESS: Not exactly, but I 15:58:56	14	it's the liquidated damages along with the 16:16:54
15	believe there was testimony by Matt Ryan 15:58:57	15	assignment clause seems to be the changes that go 16:16:57
16	that -- I mean generally at that stage, it 15:59:00	16	from, I believe, the March -- there's a March 16:17:01
17	was a very general description. Number of 15:59:03	17	Letter of Intent and then there was an April 16:17:05
18	beds. Annual amount of sale. I mean, I 15:59:12	18	or -- there were two -- two offers that were -- 16:17:09
19	think he sort of discussed that when he was 15:59:14	19	numbers that were referenced. And the only 16:17:14
20	first -- prior to the execution of a 15:59:16	20	difference that appears in the contracts are 16:17:16
21	Confidentiality Agreement. It was only very 15:59:19	21	the -- are those two provisions, which is 16:17:18
22	general. 15:59:22	22	consistent with -- 16:17:23
23	BY MS. MITCHELL: 15:59:23	23	Q. So is it your opinion that -- do you 16:17:25
24	Q. Okay. 15:59:23	24	believe that PharMerica paid 20.5 million rather 16:17:33
25	MR. FRIEDMAN: Standby. The time 15:59:38	25	than 17 million, in your words, in exchange for 16:17:36
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1	K. McAnaney	1	K. McAnaney
2	is 3:59. We are going off the record. This 15:59:39	2	the inclusion of this language in the PSA's? 16:17:41
3	will end Recording No. 3. 15:59:43	3	A. I don't know the exact amount, but I 16:17:47
4	(Whereupon there was a brief 15:59:45	4	know they paid for the inclusion of that 16:17:49
5	recess.) 15:59:46	5	language. 16:17:52
6	MR. FRIEDMAN: The time is 4:14. 16:14:44	6	Q. Why do you know that? 16:17:52
7	We are back on the record. This will be the 16:14:47	7	A. Because -- well, because it was 16:17:54
8	start of Recording No. 4. 16:14:49	8	required as -- as a condition precedent to 16:17:57
9	BY MS. MITCHELL: 16:14:52	9	getting any money. So it's part of the -- it's a 16:18:00
10	Q. Mr. McAnaney, I believe that you 16:14:56	10	condition of getting the 20.5. 16:18:04
11	testified earlier that while you believe that the 16:14:58	11	Q. If PharMerica -- if the evidence were 16:18:09
12	addition of several terms to the PSA's increased 16:15:02	12	such where PharMaster came back and said, no, 16:18:15
13	the value of the PSA's, you did not attach a 16:15:05	13	we'll take the 20.5 million dollars, but we're 16:18:18
14	value, a particular dollar value to those 16:15:12	14	not including that language, does that change 16:18:21
15	amendments to the PSA's; is that correct? 16:15:17	15	your analysis? 16:18:27
16	A. That's correct. 16:15:19	16	A. Well, if they had done that deal and 16:18:30
17	Q. Can you explain to me, then, what is 16:15:23	17	people would have agreed to it, I think it might 16:18:34
18	the basis for your opinion that I believe is 16:15:25	18	affect the analysis if they hadn't changed the 16:18:38
19	on -- roughly on Page 7 of your supplemental 16:15:31	19	agreements. 16:18:41
20	report, which I will refer to as the September 16:15:35	20	Q. How do you know that PharMerica 16:18:41
21	report for ease of reference, where you talk 16:15:38	21	wouldn't have been willing to pay 20.5 million 16:18:43
22	about the liquidated damages clause, and you 16:15:45	22	dollars even in the absence of the changes in 16:18:45
23	indicate in the report that the increase in 16:15:49	23	7.4? 16:18:49
24	PharMerica's offer from 18 million to 20.5 16:15:55	24	A. Well, I know that they required it, so 16:18:50
25	million -- excuse me, 17 million to 20.5 million 16:16:01	25	I don't know that it really matters whether they 16:18:53

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1	K. McAnaney	1	K. McAnaney
2	they wanted to conform it. 16:23:55	2	THE WITNESS: Yes. My 16:26:11
3	BY MS. MITCHELL: 16:23:58	3	understanding is that the testimony you're 16:26:12
4	Q. Whose explanation? 16:23:58	4	talking to is when they're negotiating with 16:26:18
5	A. I believe it was in the documents 16:23:59	5	institutional -- with SNF's that they're 16:26:22
6	produced. Whether it was in the Houlahan Lokey, 16:24:03	6	looking for in a PSA and nobody gives it to 16:26:24
7	that's my recollection. I do recollect that they 16:24:05	7	them. And I thought the testimony was 16:26:28
8	also -- the counsel said there were two. 16:24:11	8	they've gotten it. The only place that 16:26:30
9	Q. I'm sorry; said there were two what? 16:24:15	9	they've come close is in -- when they 16:26:32
10	A. Two forms. Two standard forms. 16:24:17	10	purchase captives. When they talked about 16:26:34
11	Q. PharMerica's counsel? 16:24:21	11	two or three recent purchases of captives. 16:26:39
12	A. I believe it was PharMerica's counsel. 16:24:23	12	So I didn't give it much thought because I 16:26:41
13	Q. Is there anything illegal about 16:24:25	13	think it conforms. I don't think anyone 16:26:43
14	altering one's standard form? 16:24:27	14	would give it in an independent, in an 16:26:47
15	A. No. 16:24:30	15	arrangement between two parties operating at 16:26:52
16	Q. With regard to the liquidated damages 16:24:32	16	arm's length. 16:26:54
17	provision, in reaching your opinions, did you 16:24:34	17	BY MS. MITCHELL: 16:26:55
18	consider testimony indicating that PharMerica 16:24:40	18	Q. In connection with the transaction 16:26:56
19	often requests liquidated -- or perhaps even 16:24:44	19	that you talked about, historical transaction in 16:26:58
20	always requests liquidated damages provisions? 16:24:48	20	which there was an investigation by DOJ/OIG 16:27:02
21	A. I thought -- 16:24:51	21	involving PharMerica, what -- the pharmacy at 16:27:07
22	MR. MEYER: Objection, form. 16:24:52	22	issue, did it have a history of operations? 16:27:14
23	THE WITNESS: -- I recall the 16:24:53	23	A. Yes. 16:27:18
24	testimony being as they never got it except 16:24:54	24	Q. Do you know what the length of those 16:27:19
25	here, or maybe once, but -- 16:24:57	25	operations were? 16:27:21
	163		165
1	K. McAnaney	1	K. McAnaney
2	BY MS. MITCHELL: 16:24:59	2	A. Not particularly long. 16:27:23
3	Q. That, however, was not my question. 16:25:00	3	Q. And by that, what do you mean? Days, 16:27:26
4	The question is, did you consider 16:25:02	4	months, weeks, years? 16:27:29
5	testimony provided by PharMerica indicating that 16:25:05	5	A. I think months. 16:27:30
6	they always ask for liquidated damages 16:25:09	6	Q. Do you recall how many months? 16:27:31
7	provisions? 16:25:12	7	A. I think perhaps two, three. I think 16:27:34
8	MR. MEYER: Objection, form. 16:25:16	8	it varied depending on the facility. 16:27:36
9	THE WITNESS: I mean, I read it. 16:25:17	9	Q. Was that an important factor in the 16:27:43
10	BY MS. MITCHELL: 16:25:19	10	government's case at that point? 16:27:47
11	Q. Okay. So you saw it? 16:25:19	11	MR. MEYER: Objection, form. 16:27:52
12	A. Yes. 16:25:21	12	THE WITNESS: Well, I think it 16:27:53
13	Q. Okay. And then is it your 16:25:21	13	was -- it was highly probative of the 16:27:54
14	understanding that despite asking for it, they 16:25:24	14	underlying offense, so it was a good piece 16:27:58
15	may not get that language included in a contract? 16:25:31	15	of evidence. 16:28:01
16	A. I believe that was the testimony. 16:25:38	16	BY MS. MITCHELL: 16:28:03
17	Q. Okay. So it's entirely possible 16:25:41	17	Q. Did it matter that -- we'll go back to 16:28:05
18	that -- well, in fact, based on what you've just 16:25:45	18	that. 16:28:17
19	described as having read, it appears as though 16:25:48	19	In connection with your first opinion 16:28:20
20	PharMerica does, in fact, ask for a liquidated 16:25:53	20	in Exhibit-3, which in summary, they're set forth 16:28:23
21	damages provision and doesn't get it. 16:25:56	21	beginning on Page 10, Opinion A, "Experienced 16:28:35
22	Is there any reason to -- for you to 16:25:59	22	healthcare attorneys reviewing the arrangements 16:28:40
23	conclude that that same situation would have been 16:26:03	23	between PharMerica and PharMaster would conclude 16:28:40
24	applicable here? 16:26:07	24	that an -- that the arrangement violated federal 16:28:44
25	MR. MEYER: Objection, form. 16:26:09	25	healthcare -- the federal healthcare 16:28:48

<p style="text-align: center;">166</p> <p>1 K. McAnaney 2 Anti-Kickback Statute." 16:28:52 3 Did I read that correctly? 16:28:53 4 A. Yes. 16:28:54 5 Q. Is that a legal opinion, Mr. McAnaney? 16:28:55 6 A. No. It's my opinion as to what 16:28:58 7 experienced healthcare counsel would if they had 16:29:00 8 full knowledge of the facts; what they would come 16:29:03 9 to. 16:29:05 10 Q. I'm sorry; can you say that again? 16:29:09 11 A. It's my opinion as to what experienced 16:29:11 12 legal counsel healthcare -- experienced in 16:29:13 13 healthcare would come to after examining this -- 16:29:17 14 the arrangement on all the facts. 16:29:20 15 Q. That they would, as a matter of law, 16:29:29 16 conclude that the arrangement violated the 16:29:31 17 federal healthcare Anti-Kickback Statute? 16:29:35 18 A. That they would conclude that the 16:29:37 19 arrangement violated the Anti-Kickback Statute. 16:29:38 20 Q. Which ultimately is a determination as 16:29:41 21 to whether a violation of law occurred? 16:29:44 22 A. Well, it goes -- yes, it goes to 16:29:48 23 scienter. Oh, S-C-I-E-N-T-E-R. 16:29:50 24 MR. KRUEGER: If I could ask you 16:29:58 25 to keep your voice up. Sometimes you trail 16:29:59</p>	<p style="text-align: center;">168</p> <p>1 K. McAnaney 2 A. Specifically about this? 16:31:11 3 Q. Yes, specifically. 16:31:12 4 A. No. 16:31:13 5 Q. Did you conduct a survey of other 16:31:13 6 healthcare attorneys? 16:31:15 7 A. No. 16:31:16 8 Q. With no disrespect, Mr. McAnaney, I 16:31:21 9 assume that you consider yourself to be an 16:31:23 10 experienced healthcare attorney; is that correct? 16:31:25 11 A. That is correct. 16:31:27 12 Q. Are you familiar with other 16:31:28 13 experienced healthcare attorneys? 16:31:31 14 A. Yes. 16:31:34 15 Q. Do you sometimes disagree with other 16:31:35 16 experienced healthcare attorneys as to whether 16:31:38 17 something might be a violation of the 16:31:42 18 Anti-Kickback Statute? 16:31:45 19 A. Sometimes. 16:31:49 20 Q. Are you familiar with Attorney Jeff 16:31:52 21 Mittleman at Holland & Knight? 16:31:56 22 A. I am not. 16:31:59 23 Q. Did you read Mr. Mittleman's 16:31:59 24 deposition transcript? 16:32:01 25 A. I don't recall. 16:32:05</p>
<p style="text-align: center;">167</p> <p>1 K. McAnaney 2 off at the end of a sentence. Thank you. 16:30:01 3 THE WITNESS: Yes. 16:30:04 4 BY MS. MITCHELL: 16:30:04 5 Q. In providing -- if you had the 16:30:05 6 opportunity to provide this opinion at trial, 16:30:08 7 would you expect a jury to take your direction 16:30:11 8 and similarly conclude that an experienced 16:30:18 9 healthcare attorney would conclude that the 16:30:21 10 arrangements we're talking about in your report 16:30:24 11 would violate the federal Anti-Kickback Statute? 16:30:26 12 MR. MEYER: Objection, form. 16:30:29 13 THE WITNESS: I leave that to 16:30:32 14 counsel. 16:30:33 15 BY MS. MITCHELL: 16:30:36 16 Q. I'm asking you, do you think that this 16:30:38 17 opinion that you're rendering would direct the 16:30:41 18 jury as to what their conclusions should be? 16:30:45 19 MR. MEYER: Objection, form. 16:30:48 20 THE WITNESS: No, I don't think 16:30:51 21 so. I don't think it would be -- it would 16:30:51 22 be taken for what it's offered for. 16:30:57 23 BY MS. MITCHELL: 16:31:00 24 Q. In terms of developing this opinion, 16:31:03 25 did you speak to other healthcare attorneys? 16:31:06</p>	<p style="text-align: center;">169</p> <p>1 K. McAnaney 2 Q. I take it from your responses to my 16:32:09 3 questions what your answer may be, but do you 16:32:12 4 have any ability to determine or evaluate from 16:32:16 5 your perspective whether Mr. Mittleman is an 16:32:18 6 experienced healthcare attorney? 16:32:21 7 A. I do not. 16:32:23 8 Q. What types of things do you think make 16:32:24 9 one an experienced healthcare attorney? 16:32:29 10 A. Well, in the fraud and abuse area, 16:32:33 11 it's people that have worked in the area and are 16:32:36 12 familiar with the guidances, the rules, the 16:32:40 13 regulations, the preamble, the government's 16:32:44 14 enforcement policies. 16:32:47 15 Q. Does one need to have been employed by 16:32:50 16 the government in order to have some expertise in 16:32:52 17 this area? 16:32:58 18 A. No. 16:32:59 19 Q. Are you familiar with a woman by 16:33:02 20 the -- an attorney by the name of Katie 16:33:04 21 McDermott? 16:33:06 22 A. I am. 16:33:07 23 Q. Do you consider her to be an 16:33:07 24 experienced healthcare attorney? 16:33:08 25 A. I do. 16:33:09</p>

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1	K. McAnaney	1	K. McAnaney	
2	Q. And are you familiar with the	16:33:11	2 attorney?	16:35:44
3	gentleman sitting to my left here, Mr. --	16:33:16	3 A. I think I know that. I think I know	16:35:47
4	Attorney Thomas Crane?	16:33:18	4 that.	16:35:49
5	A. I am.	16:33:20	5 Q. This may be a short line of	16:35:51
6	Q. And do you consider Mr. Crane to be an	16:33:21	6 questioning based on that response.	16:35:52
7	experienced healthcare attorney?	16:33:23	7 Are you aware that Mr. Lichtman holds	16:35:57
8	A. I do.	16:33:23	8 himself out to be an expert in the area of the	16:35:58
9	Q. Do you think that all experienced	16:33:33	9 Anti-Kickback Statute?	16:36:02
10	healthcare attorneys would agree that the	16:33:34	10 A. I am not.	16:36:03
11	arrangement between PharMerica and PharMaster	16:33:36	11 MR. MEYER: Objection, form.	16:36:04
12	violated the federal Anti-Kickback Statute?	16:33:39	12 BY MS. MITCHELL:	16:36:05
13	A. No.	16:33:41	13 Q. You are not?	16:36:06
14	Q. And, in fact, the arrangement between	16:33:48	14 A. I am not.	16:36:07
15	PharMerica and PharMaster was reviewed by	16:33:51	15 Q. In connection with the plaintiffs'	16:36:10
16	experienced healthcare attorneys?	16:33:55	16 acquisition of the nursing homes, the SNF's in	16:36:15
17	MR. MEYER: Objection, form.	16:33:58	17 this case, would you expect as part of that	16:36:18
18	THE WITNESS: Well, it's not clear	16:33:59	18 process, that due diligence would be undertaken?	16:36:24
19	to me that it was reviewed for; A, with all	16:34:02	19 A. Yes.	16:36:27
20	the facts presented, or by counsel	16:34:07	20 Q. Would you expect as part of that due	16:36:29
21	specifically with respect to the Kickback	16:34:12	21 diligence, that somebody would review the	16:36:30
22	Statute.	16:34:14	22 Pharmacy Services Agreements?	16:36:36
23	BY MS. MITCHELL:	16:34:16	23 MR. MEYER: Objection, form.	16:36:38
24	Q. So you don't know one way or the other	16:34:17	24 THE WITNESS: I would hope so.	16:36:40
25	whether that review was undertaken?	16:34:18	25 BY MS. MITCHELL:	16:36:41
	171		173	
1	K. McAnaney	1	K. McAnaney	
2	A. I did not -- I thought that the	16:34:24	2 Q. As part of that review, would you	16:36:42
3	documents and depositions that I've seen haven't	16:34:28	3 expect someone to evaluate whether there were any	16:36:45
4	been entirely clear as to what it was reviewed	16:34:30	4 anti-kickback issues related to the PSA's?	16:36:50
5	for.	16:34:33	5 MR. MEYER: Objection, form.	16:36:55
6	Q. Okay. But -- so you're not sure one	16:34:33	6 THE WITNESS: Well, I don't -- I	16:36:57
7	way or the other whether experienced healthcare	16:34:36	7 think they would have looked at the terms	16:36:59
8	attorneys reviewed the arrangement as you've	16:34:40	8 and -- I mean hopefully flagged if they	16:37:03
9	referred to it?	16:34:44	9 thought there were unusual terms.	16:37:09
10	A. That's correct, especially with	16:34:46	10 BY MS. MITCHELL:	16:37:11
11	knowledge of all of the circumstances.	16:34:48	11 Q. Okay. Do you believe based on the	16:37:14
12	Q. If experienced healthcare counsel with	16:34:50	12 PSA's themselves, that it should have raised a	16:37:19
13	knowledge of all of the facts and circumstances	16:34:53	13 flag to someone that there was an anti-kickback	16:37:25
14	did review these transactions, would that impact	16:34:56	14 issue?	16:37:29
15	your opinion?	16:35:02	15 MR. MEYER: Objection, form.	16:37:30
16	A. Well, no. I assume that someone would	16:35:04	16 THE WITNESS: I think they should	16:37:32
17	always disagree.	16:35:09	17 have raised a flag that I would have thought	16:37:33
18	Q. Do you -- are you familiar with the	16:35:22	18 there was a potential issue.	16:37:38
19	work of Mr. Lichtman, Aaron Lichtman, the	16:35:27	19 BY MS. MITCHELL:	16:37:40
20	plaintiffs' representative who was here	16:35:35	20 Q. And in your experience in conducting	16:37:43
21	previously or earlier today?	16:35:36	21 due diligence, if somebody did not raise a flag,	16:37:45
22	A. (No response.)	16:35:37	22 would you consider that problematic?	16:37:52
23	Q. And that was an inartful question. I	16:35:39	23 MR. MEYER: Objection, form.	16:37:55
24	apologize.	16:35:41	24 THE WITNESS: Having done a lot of	16:37:56
25	Are you aware that Mr. Lichtman is an	16:35:42	25 due diligence, things slip all the time, so	16:37:57

<p style="text-align: right;">174</p> <p>1 K. McAnaney 2 I think it would have -- I mean, I think it 16:37:59 3 would have been unfortunate. 16:38:04 4 BY MS. MITCHELL: 16:38:05 5 Q. Okay. And -- in connection with 16:38:06 6 Opinion B that you offer, which I think appears 16:38:24 7 in its entirety on Page 10 as well, it reads, 16:38:28 8 "The arrangement between PharMerica and 16:38:31 9 PharMaster violated the federal healthcare 16:38:33 10 Anti-Kickback Statute." 16:38:36 11 Did I read that correctly? 16:38:37 12 A. You did. 16:38:39 13 Q. Is this your legal opinion, Mr. 16:38:45 14 McAnaney? 16:38:48 15 A. This is my opinion based on -- as an 16:38:50 16 experienced healthcare attorney. And, yes, it 16:38:53 17 goes to -- 16:38:58 18 Q. The legal issue as to whether -- 16:39:01 19 A. To a conclusion, yes. 16:39:04 20 Q. Mr. McAnaney, do you think that today 16:39:25 21 under the PSA's, a violation of the Anti-Kickback 16:39:30 22 Statute is occurring? 16:39:34 23 A. Yes. 16:39:38 24 Q. How so? 16:39:41 25 A. They're getting the referrals that 16:39:43</p>	<p style="text-align: right;">176</p> <p>1 K. McAnaney 2 connection with the sale of PharMaster? 16:41:12 3 MR. MEYER: Objection, form. 16:41:19 4 THE WITNESS: I'm -- I think the 16:41:21 5 PSA's are part and parcel of the illegal 16:41:27 6 kickback scheme. That the scheme was 16:41:32 7 basically, we'll sell you -- you'll get all 16:41:34 8 this pharmacy business, and we'll arrange 16:41:38 9 for it for a period of ten years. And since 16:41:40 10 I can't give it to you directly, we just 16:41:45 11 launder it through PharMaster. And if you 16:41:49 12 don't get it either way, if you don't get 16:41:54 13 all those referrals, we'll pay you back your 16:41:57 14 money. So I think it's -- I mean, it's 16:42:01 15 got a -- if the referrals don't come, I've 16:42:04 16 got to pay you back the money because I 16:42:07 17 didn't get what I paid for from my kickback. 16:42:08 18 BY MS. MITCHELL: 16:42:10 19 Q. Would it be fair to analogize this 16:42:11 20 situation to the PSA's being the fruit of the 16:42:14 21 poisoned tree? 16:42:17 22 MR. MEYER: Objection, form. 16:42:20 23 THE WITNESS: No. I think that 16:42:21 24 the referrals, the actual part, the claims 16:42:24 25 submission maybe are the fruit of the 16:42:30</p>
<p style="text-align: right;">175</p> <p>1 K. McAnaney 2 they paid for, so I think it's an ongoing scheme. 16:39:46 3 I would think under the -- based on positions the 16:39:49 4 Justice Department has taken in cases, I think 16:39:58 5 that any referrals that people get as a result of 16:40:00 6 a kickback are ongoing violations and ongoing 16:40:03 7 false claims. 16:40:07 8 Q. Are the plaintiffs implicated in that? 16:40:08 9 A. No, I wouldn't think so. 16:40:10 10 Q. And why is that? 16:40:12 11 A. Because they're submitting the claims, 16:40:13 12 but they're not the people that have made them 16:40:16 13 false and they did not pay the kickback. So I 16:40:19 14 don't see -- they certainly didn't violate the 16:40:22 15 Kickback Statute. The question would be are they 16:40:25 16 submitting false claims, but they're not, because 16:40:28 17 they're not knowingly. 16:40:31 18 Q. And I'm trying to just parse through 16:40:35 19 this as to what the actual violation that you're 16:40:37 20 contending occurred. 16:40:40 21 And is it fair to say that the PSA's 16:40:44 22 themselves do not amount to a violation of the 16:40:53 23 Anti-Kickback Statute, but that they, in your 16:40:56 24 opinion, provide evidence of the intent -- the 16:40:59 25 alleged intent of PharMerica and PharMaster in 16:41:06</p>	<p style="text-align: right;">177</p> <p>1 K. McAnaney 2 poisonous tree. I think the PSA's are 16:42:32 3 poisonous. They're part and parcel of the 16:42:34 4 poisonous tree. 16:42:37 5 BY MS. MITCHELL: 16:42:38 6 Q. And yet the plaintiffs are parties to 16:42:38 7 those PSA's, but they are not involved in any 16:42:41 8 type of violation of the Anti-Kickback Statute? 16:42:44 9 A. No, because -- I mean, they didn't 16:42:47 10 sell the referrals. I mean, they didn't get the 16:42:49 11 money, so I mean, I don't see what they did under 16:42:51 12 the -- the kickback, you have to either pay or 16:42:56 13 receive the remuneration, and they haven't done 16:42:58 14 either of those. The remuneration went to the 16:43:01 15 Pittsburg SNF prior owners, the 20.5 million, and 16:43:05 16 the referrals have gone to PharMerica. 16:43:11 17 Q. In connection with -- is there a 16:44:04 18 difference, Mr. McAnaney, under the Anti-Kickback 16:44:08 19 Statute between should have known versus did 16:44:11 20 know, in terms of satisfying the requirements 16:44:15 21 under the Anti-Kickback Statute, the intent 16:44:19 22 requirement? 16:44:21 23 A. Well, yeah, under the Kickback 16:44:23 24 Statute, it has to be a knowing and willful 16:44:27 25 violation. 16:44:30</p>

<p style="text-align: right;">178</p> <p>1 K. McAnaney 2 Q. Okay. And what is the evidence here 16:44:31 3 in your mind of a knowing intent by PharMerica to 16:44:38 4 violate the Anti-Kickback Statute? 16:44:43 5 A. Well, I think; A, they knew the terms 16:44:45 6 were negotiable with the owners of the SNF's. So 16:44:50 7 they knew they were actually dealing not with 16:44:54 8 PharMaster, but also with the Pittsburg SNF's. 16:44:57 9 They knew the terms were fully negotiable. They, 16:45:01 10 in fact, negotiated for them so that they could 16:45:04 11 be sure they were going to get those referrals 16:45:09 12 for a ten-year period of time. And that if they 16:45:13 13 didn't, they would get their money back. 16:45:17 14 They also knew at the same time that 16:45:21 15 they had just settled with the government and 16:45:26 16 they knew the government's contention was that 16:45:29 17 extending a contract term to seven years, three 16:45:32 18 years shorter than this, was unusual and 16:45:36 19 constituted a violation, along with tying it in 16:45:40 20 with changes to the termination provision. So -- 16:45:46 21 and they apparently -- I mean, they had a CIA in 16:45:50 22 place that required them to have training and 16:45:53 23 knowledge of the Kickback Statute, including 16:45:59 24 specific to their industry, which they had just 16:46:02 25 been involved in a major kickback, and they 16:46:06</p>	<p style="text-align: right;">180</p> <p>1 K. McAnaney 2 A. Substantively? 16:47:25 3 Q. Yeah. 16:47:26 4 A. No. 16:47:26 5 Q. So no distinguishing factors 16:47:26 6 whatsoever? 16:47:29 7 MR. MEYER: Objection, form. 16:47:31 8 THE WITNESS: I think not of a 16:47:32 9 substantive offense. 16:47:33 10 BY MS. MITCHELL: 16:47:34 11 Q. No substantive discriminating factors 16:47:35 12 between the two transactions? 16:47:38 13 A. That's correct. 16:47:40 14 Q. With regard to Opinion C, I don't 16:47:44 15 think we've done Opinion C, or did we? 16:47:51 16 A. No. 16:47:55 17 Q. Opinion C in your report reads, 16:47:59 18 "PharMerica" -- this is on Page 11; excuse me, 16:48:00 19 Mr. McAnaney. "PharMerica was aware that the 16:48:04 20 arrangement between PharMaster and the Pittsburg 16:48:06 21 SNF's via the January 2008 PSA's and the 16:48:10 22 October 2008 PSA's violated the Anti-Kickback 16:48:13 23 Statute." 16:48:16 24 Did I read that correctly? 16:48:18 25 A. Yes. 16:48:19</p>
<p style="text-align: right;">179</p> <p>1 K. McAnaney 2 basically were doing the same thing. 16:46:11 3 And I think finally that there's at 16:46:15 4 least -- the fact is they did not report it under 16:46:19 5 the CIA to the government. I think they were 16:46:23 6 well aware that this was a problematic 16:46:27 7 arrangement and they went forward anyway. 16:46:32 8 And I think the law is if you take 16:46:37 9 that risk, you take that risk. You can't go to 16:46:40 10 the edge of the line and then say, well, I 16:46:42 11 thought I was on this side, if you fall over. 16:46:44 12 Q. Just out of curiosity, Mr. McAnaney, 16:46:48 13 is knowledge of the government's position the 16:46:50 14 same as knowledge of the law? 16:46:53 15 MR. MEYER: Objection, form. 16:46:57 16 THE WITNESS: I think it is -- it 16:46:59 17 is knowledge of the government's view of the 16:47:02 18 law, and so it is knowledge of a potential 16:47:06 19 view of the law. So, yes, I think it puts 16:47:08 20 you on notice. 16:47:11 21 BY MS. MITCHELL: 16:47:12 22 Q. Do you think that there are any 16:47:13 23 distinguishing factors between the transaction at 16:47:15 24 issue and this case, and the transaction -- the 16:47:18 25 Hollins Manor case? 16:47:23</p>	<p style="text-align: right;">181</p> <p>1 K. McAnaney 2 Q. How is Opinion C different from 16:48:19 3 Opinion B? 16:48:22 4 A. Well, it was specifically to 16:48:23 5 PharMaster, so -- as opposed to the 16:48:26 6 arrangement -- in a kickback arrangement, 16:48:31 7 liability is -- each side of a transaction, you 16:48:38 8 have to look at their liability separately. And 16:48:46 9 so that's all -- C is specifically focused on 16:48:49 10 PharMerica. 16:48:54 11 Q. Okay. And in reading Opinion C, it 16:48:59 12 struck me that you also were saying -- and 16:49:08 13 correct me if I'm wrong -- that it's your opinion 16:49:11 14 that even if PharMerica had never come on the 16:49:15 15 scene, that there would have been a violation of 16:49:21 16 the anti-kickback -- even if PharMerica had never 16:49:25 17 come on the scene and acquired the assets of 16:49:29 18 PharMaster, that there would have been some 16:49:32 19 violation of the Anti-Kickback Statute; is that 16:49:34 20 correct? 16:49:36 21 A. Yes, I believe so. 16:49:39 22 Q. Okay. Because in Opinion C, you're 16:49:41 23 talking about the arrangement between PharMaster 16:49:43 24 and the Pittsburg SNF's? 16:49:45 25 A. I was -- my understanding of the 16:49:54</p>

<p style="text-align: center;">186</p> <p>1 K. McAnaney 2 Kickback Statute when they required the 16:55:22 3 change in the terms. 16:55:24 4 BY MS. MITCHELL: 16:55:25 5 Q. And I'm just -- I'm focusing on 16:55:25 6 Opinion C. I'm sorry. I should have been more 16:55:28 7 clear about that. 16:55:30 8 And Opinion C was that PharMerica was 16:55:31 9 aware that the arrangement between PharMaster and 16:55:34 10 the Pittsburg SNF's via the January 2008 PSA's 16:55:37 11 and the October PSA's violated the Anti-Kickback 16:55:41 12 Statute. 16:55:44 13 A. Well, I think the October 2008 PSA's 16:55:45 14 violated the Anti-Kickback Statute, so that's 16:55:48 15 what I'm focusing on. I think the 2008 16:55:50 16 clearly -- they were aware of it. 16:55:54 17 Q. Okay. What about the January 2008 16:55:58 18 PSA's? 16:56:00 19 A. Well, I think they -- I think they -- 16:56:02 20 I mean, they were aware that they were buying a 16:56:06 21 10-year stream of referrals, so I think, yeah, 16:56:08 22 that it was a negotiable term. So I think, yes, 16:56:11 23 they should have been aware. 16:56:14 24 Q. And I started this line of questioning 16:56:15 25 because I was trying to understand if these 16:56:17</p>	<p style="text-align: center;">188</p> <p>1 K. McAnaney 2 Pittsburg SNF's, my answer's yes. 16:58:07 3 Q. Because that offer to sell amounted to 16:58:12 4 a solicitation? 16:58:15 5 A. Well, because I think they -- they -- 16:58:17 6 they solicited remuneration in exchange for the 16:58:21 7 referral of future healthcare business. 16:58:25 8 Q. If that's the case, does it matter 16:58:34 9 what they sold the -- PharMaster for? 16:58:36 10 A. No, not as a matter of law. 16:58:42 11 Q. Mr. McAnaney, do you have a view as to 16:59:08 12 whether -- well, have you reviewed the Third 16:59:10 13 Amended Complaint? And I apologize. You may 16:59:15 14 have indicated as much in your appendix. Let me 16:59:18 15 do it this way, Mr. McAnaney, 'cause -- 16:59:25 16 Do you have an understanding as to 16:59:28 17 what the underlying claim is in this case? 16:59:30 18 A. Not beyond the aspect I've looked at. 16:59:40 19 Q. Okay. Do you have an understanding as 16:59:47 20 to whether this case turns upon whether a 16:59:48 21 violation of the Anti-Kickback Statute occurred? 16:59:52 22 MR. MEYER: Objection, form. 16:59:54 23 THE WITNESS: Well, I guess my 16:59:58 24 understanding is it would be significant, in 17:00:01 25 that if that were -- if the contracts were 17:00:10</p>
<p style="text-align: center;">187</p> <p>1 K. McAnaney 2 PSA's, independent of PharMerica's acquisition of 16:56:20 3 PharMaster, if your opinion in Opinion C is -- 16:56:25 4 means that these PSA's independent of 16:56:31 5 PharMerica's acquisition of PharMaster were 16:56:34 6 violative of the Anti-Kickback Statute. 16:56:38 7 A. I don't think -- the PSA's themselves 16:56:42 8 are not violative, except as part of the scheme. 16:56:44 9 And I think they were -- there had been -- that 16:56:49 10 they were violative because -- with respect to 16:56:53 11 the prior owners of the Pittsburg SNF's because 16:57:00 12 they had been changed and they constituted an 16:57:03 13 offer of referrals for remuneration. 16:57:06 14 Q. Okay. But then you now talk about a 16:57:11 15 scheme that would have -- by the way, I'm reading 16:57:17 16 Opinion C, that would have been under way before 16:57:23 17 PharMerica was involved. 16:57:27 18 A. Well, the offer would have been out 16:57:30 19 there, yes. 16:57:31 20 Q. Okay. And the -- is it your opinion 16:57:39 21 that the mere offer to sell PharMaster as of 16:57:43 22 January 2008, in light of a PSA that was -- or 16:57:52 23 PSA's that were amended in January 2008, violated 16:57:56 24 the Anti-Kickback Statute? 16:58:00 25 A. As to the prior owners of the 16:58:03</p>	<p style="text-align: center;">189</p> <p>1 K. McAnaney 2 unlawful or in violation of public policy, 17:00:15 3 they may be unenforceable. 17:00:21 4 BY MS. MITCHELL: 17:00:23 5 Q. Okay. With regard to Opinion No. 4 or 17:00:31 6 D, I should say, that's on Page 11, "The actions 17:00:40 7 of PharMaster and Licari" -- I think it should 17:00:48 8 read D'Arcangelo -- "in creating the January 2008 17:00:52 9 PSA's, then shortly thereafter soliciting and 17:00:55 10 receiving remuneration from PharMerica at the end 17:00:59 11 of sale of PharMaster, among others, for the 17:01:01 12 referral of business from Pittsburg SNF's 17:01:03 13 violated the Anti-Kickback Statute." 17:01:06 14 How is that opinion different than 17:01:08 15 Opinion C? 17:01:10 16 A. That focuses on the -- the prior 17:01:12 17 owners of the Pittsburg SNF, their liability. As 17:01:18 18 I said, you look at each act of liability 17:01:23 19 separately. 17:01:29 20 Q. Okay. Perhaps my confusion comes 17:01:35 21 because in talking about your Opinion C, we've 17:01:38 22 talked a lot about the actions of the PharMaster 17:01:40 23 folks, so I'm trying to distinguish between those 17:01:47 24 two. 17:01:54 25 MR. MEYER: Objection, form. 17:02:01</p>

<p style="text-align: right;">190</p> <p>1 K. McAnaney 2 THE WITNESS: I'm not sure what 17:02:05 3 the question is. 17:02:06 4 BY MS. MITCHELL: 17:02:07 5 Q. Okay. We took Opinion C in two parts, 17:02:08 6 and you spent some time explaining to me your 17:02:12 7 view as to why the January 2008 PSA's and the 17:02:15 8 October 2008 PSA's were an issue. 17:02:20 9 So in connection with Opinion C, if 17:02:23 10 you're focusing on PharMerica's involvement, is 17:02:27 11 your opinion there that PharMerica basically was 17:02:31 12 aware of what you're then talking about in 17:02:38 13 Opinion D? 17:02:41 14 A. Well, I don't think they probably were 17:02:46 15 aware of everything that was in -- that goes into 17:02:49 16 my conclusion as to Appendix -- to Opinion D. 17:02:52 17 Q. Okay. 17:02:57 18 A. But they were aware of enough. I 17:02:59 19 should probably have flipped the two. 17:03:01 20 Q. Okay. I understand what you've done 17:03:03 21 now. 17:03:05 22 And I'm not sure I asked you this, Mr. 17:03:11 23 McAnaney, but in connection with Opinion C, is 17:03:14 24 that a legal opinion? 17:03:19 25 MR. MEYER: Objection, form. And 17:03:20</p>	<p style="text-align: right;">192</p> <p>1 K. McAnaney 2 about the actions of a group of people, and that 17:04:20 3 those actions amount to a violation of the 17:04:26 4 Anti-Kickback Statute. Is that a legal opinion? 17:04:31 5 MR. MEYER: Objection, form. 17:04:35 6 THE WITNESS: In part, yes, that's 17:04:46 7 my expert opinion. 17:04:47 8 BY MS. MITCHELL: 17:04:49 9 Q. I need a few minutes because I may 17:05:17 10 have covered -- Mr. McAnaney, do you have any 17:05:19 11 involvement or experience with owning nursing 17:05:34 12 homes? 17:05:38 13 A. No. 17:05:39 14 Q. Do you have any experience in 17:05:40 15 operating nursing homes? 17:05:42 16 A. No. 17:05:43 17 Q. You talk on Page 13 of your report in 17:06:07 18 the very last paragraph, you talk about what 17:06:12 19 we've referred to here as the Hollins Manor 17:06:17 20 transaction? 17:06:20 21 A. Yes. 17:06:21 22 Q. And you reference pricing provisions. 17:06:31 23 A. Yes. 17:06:37 24 Q. What do you know about those pricing 17:06:38 25 provisions? 17:06:39</p>
<p style="text-align: right;">191</p> <p>1 K. McAnaney 2 to the extent that Ms. Mitchell, which I 17:03:22 3 know she asked the question prior as to A 17:03:25 4 and B, I object to the form of those 17:03:27 5 questions. I don't recall whether or not I 17:03:29 6 did, but I'm asserting an objection. Go 17:03:31 7 ahead and answer. 17:03:33 8 THE WITNESS: I'm sorry. Could 17:03:34 9 you re -- 17:03:35 10 BY MS. MITCHELL: 17:03:36 11 Q. Sure. With regard to your Opinion 17:03:37 12 C -- 17:03:40 13 A. Yes. 17:03:42 14 Q. -- is that a legal opinion? 17:03:42 15 MR. MEYER: Objection, form. 17:03:44 16 THE WITNESS: I think it says -- I 17:03:44 17 mean, it is what it is. 17:03:46 18 BY MS. MITCHELL: 17:03:47 19 Q. Okay. And it's that PharMerica was 17:03:52 20 aware of the existence of a violation of the 17:03:58 21 Anti-Kickback Statute? 17:04:01 22 A. Right. 17:04:03 23 Q. Okay. So you believe that PharMerica 17:04:03 24 was aware of an alleged violation of law. 17:04:07 25 With regard to Opinion D, you talk 17:04:17</p>	<p style="text-align: right;">193</p> <p>1 K. McAnaney 2 A. In that case? 17:06:45 3 Q. Yes, in that case. 17:06:46 4 A. Only that I believe they were 17:06:49 5 referenced by the IG. 17:06:51 6 Q. Okay. Do you know anything about 17:06:54 7 those pricing provisions, other than the fact 17:06:58 8 that pricing provisions generically were 17:07:01 9 referenced by -- I'm sorry, did you say OIG? 17:07:05 10 A. I believe so. I don't have the 17:07:08 11 documents here. I believe that the government 17:07:12 12 said they were more favorable -- they were 17:07:17 13 favorable pricing provisions. More favorable to 17:07:21 14 the Hollins Manor institutional pharmacy. 17:07:24 15 Q. Is there anything illegal about having 17:07:30 16 pricing provisions that are more favorable to one 17:07:32 17 party than the other? 17:07:35 18 A. Well, no. I think that -- I mean, by 17:07:38 19 themselves, I think if it's, again, in 17:07:40 20 contemplation of a sale by a captive, I think 17:07:43 21 that's -- that is some evidence that -- what's 17:07:47 22 really being sold in the referrals. 17:07:59 23 Q. So there's nothing inherently illegal 17:08:01 24 about a pricing provision. It just might be 17:08:03 25 something that you look to? 17:08:06</p>

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1	K. McAnaney	1	K. McAnaney
2	OIG decided to send a letter out, did you consult 17:52:18	2	of liability? 17:54:28
3	with OIG with respect to the letter, if you 17:52:22	3	A. That's correct. Actually, I assume 17:54:29
4	recall? 17:52:24	4	that's correct. I'm not sure I've actually seen 17:54:32
5	A. I don't -- I don't actually think I 17:52:28	5	this settlement, but I would expect that to be 17:54:35
6	was there when the letter went out. I don't 17:52:30	6	the case. 17:54:38
7	know. Actually, I didn't look at the date of the 17:52:31	7	Q. Now I know that you've made a FOIA 17:54:39
8	letter. I think that was after I left. 17:52:35	8	request with regard to this matter, the Hollins 17:54:42
9	Q. Do you know -- so you were there 17:52:37	9	matter; correct? 17:54:45
10	certainly during the time that the claim was 17:52:40	10	A. Yes. 17:54:46
11	being evaluated? 17:52:42	11	Q. Why was it -- you knew of the 17:54:47
12	A. Well, I think I was there at the 17:52:43	12	existence of that case certainly because you had 17:54:53
13	beginning of what I would say was the OIG 17:52:45	13	been involved in it earlier; correct? 17:54:55
14	investigation. 17:52:47	14	A. Correct. 17:54:58
15	Q. And, ultimately, do you recall that a 17:52:49	15	Q. And that involvement commenced with 17:54:58
16	settlement was reached, and as part of that 17:52:55	16	communications with the DOJ, and continued with 17:55:00
17	settlement, there was a CIA? 17:52:58	17	discussions with the ACRB; correct? 17:55:05
18	A. Yes, I understand that. 17:53:01	18	A. Correct. 17:55:09
19	Q. And do you also -- what are CMP's? I 17:53:03	19	Q. And would you, if you can, can you 17:55:10
20	think you testified about CMP's in your earlier 17:53:07	20	recall approximately how many discussions you had 17:55:12
21	testimony. 17:53:10	21	in totality with the Department of Justice and 17:55:15
22	A. CMP stands for civil money penalty. 17:53:10	22	colleagues at OIG? 17:55:18
23	Q. And do you recall whether or not a 17:53:13	23	A. No. I mean, Justice, probably one or 17:55:22
24	CMP, civil monetary penalties, were sought 17:53:15	24	two. And OIG, I don't recall. I mean, I saw the 17:55:26
25	against PharMerica? 17:53:19	25	people every day. 17:55:35
	219		221
1	K. McAnaney	1	K. McAnaney
2	A. I believe that the government sought 17:53:22	2	Q. So you might have a lot of informal 17:55:36
3	both civil money penalties and exclusion. 17:53:25	3	discussions that wouldn't be significant because 17:55:38
4	Q. An exclusion is exclusion from the 17:53:31	4	they may be in the hallway or things of that 17:55:43
5	Medicare program? 17:53:33	5	nature? 17:55:44
6	A. I think it's all federal healthcare 17:53:34	6	A. Right. And I think as I said, it was 17:55:44
7	programs. 17:53:36	7	the beginning of the -- the decision was being 17:55:46
8	Q. All federal healthcare. So then for a 17:53:36	8	made whether to investigate it. 17:55:50
9	company involved in the healthcare industry, is 17:53:40	9	Q. In rendering your opinions in this 17:55:55
10	it fair to say that exclusion is effectively 17:53:42	10	case that you've been asked about, and I'm going 17:55:56
11	capital punishment? 17:53:45	11	to ask you more questions, but in rendering your 17:55:58
12	A. I think that's fair to say. 17:53:47	12	opinions in this case, how much weight did you 17:56:00
13	Q. Okay. So then PharMerica's existence 17:53:48	13	put on your knowledge of the proceedings in 17:56:10
14	was threatened by this particular proceeding? 17:53:51	14	connection with the PharMerica/Hollins Manor 17:56:14
15	A. Any proceeding involving fraudulent or 17:53:57	15	transaction? 17:56:17
16	illegal conduct with respect to a federal 17:54:01	16	MR. MEYER: Objection, form. 17:56:19
17	healthcare program pretty much triggers potential 17:54:04	17	THE WITNESS: Not much beyond what 17:56:23
18	for exclusion. 17:54:07	18	the public settlement was. 17:56:24
19	Q. And at the end of the day, I 17:54:08	19	BY MR. KRUEGER: 17:56:26
20	understand that there was a settlement reached 17:54:13	20	Q. So you say "not much beyond." 17:56:26
21	rather than an adjudicated determination; is that 17:54:17	21	A. Well, I mean not beyond. 17:56:29
22	correct? 17:54:21	22	Q. Well, I think you testified in 17:56:32
23	A. That's correct. 17:54:21	23	response to earlier questions that there have not; 17:56:35
24	Q. And in the settlement, am I also 17:54:22	24	been a lot of cases brought against pharmacy 17:56:37
25	correct that PharMerica did not make an admission. 17:54:25	25	companies; is that correct? 17:56:41

<p style="text-align: center;">222</p> <p>1 K. McAnaney 2 A. No, I would say there have been many 17:56:44 3 cases brought against -- oh, pharmacy. 17:56:47 4 Q. I'm talking about Anti-Kickback 17:56:51 5 Statute cases. 17:56:51 6 A. I'm blanking for a minute. I'm not 17:56:53 7 aware of many cases against institutional 17:56:58 8 pharmacies, although they appear to be 17:57:04 9 increasing. 17:57:07 10 Q. But there have not been a large number 17:57:08 11 of those cases; correct? 17:57:10 12 MR. MEYER: Objection, form. 17:57:12 13 THE WITNESS: There have not been 17:57:13 14 many kickback cases at all. 17:57:13 15 BY MR. KRUEGER: 17:57:15 16 Q. And so -- and when I'm talking about 17:57:16 17 cases, I'm talking about whether it's a 17:57:18 18 proceeding brought by the OIG of the type you're 17:57:19 19 describing, or a more formal Complaint filed in 17:57:22 20 court. 17:57:25 21 Other than the PharMerica/Hollins 17:57:27 22 Manor case, what other cases are you aware of 17:57:31 23 against institutional pharmacies? 17:57:35 24 A. Well, I think there are cases -- 17:57:38 25 Q. I'm talking about -- 17:57:47</p>	<p style="text-align: center;">224</p> <p>1 K. McAnaney 2 another -- yes. So there's that case, and that's 17:59:15 3 the only other one I know that exactly involves 17:59:25 4 the sale of a captive. 17:59:29 5 Q. So when we talk about the sale of an 17:59:30 6 institutional pharmacy or captive, the cases that 17:59:32 7 you can think of today are the Hollins 17:59:34 8 Manor/PharMerica case. This Nehls, N-E-H-L-S, 17:59:37 9 case. 17:59:41 10 And are you aware of a case involving 17:59:44 11 Ruby Schron and Omnicare and Mariner? 17:59:47 12 A. No. 17:59:51 13 Q. So there are two cases you're aware of 17:59:52 14 that involve the sale of an institutional 17:59:54 15 pharmacy; correct? 17:59:56 16 A. Captive institution. 17:59:57 17 Q. Captive. And only two? 17:59:58 18 A. That's correct. 18:00:00 19 Q. And you were involved in one of them? 18:00:01 20 A. Yes. 18:00:03 21 Q. And so that gave you a fairly unique 18:00:04 22 background; is that fair to say? 18:00:12 23 A. Well, it gave me a prior experience in 18:00:16 24 evaluating this kind of a transaction. 18:00:22 25 Q. And so how did you use that prior 18:00:25</p>
<p style="text-align: center;">223</p> <p>1 K. McAnaney 2 A. Johnson & Johnson and Omnicare has had 17:57:48 3 a fair number of cases. 17:57:55 4 Q. I'm talking about really cases 17:57:56 5 involving the sale of an institutional pharmacy. 17:57:58 6 Not other things that may come up in the context 17:58:00 7 of a pharmacy case. 17:58:04 8 A. Well, I'm aware of Hollins Manor. And 17:58:07 9 then there's an Omnicare case that I'm aware of 17:58:12 10 that apparently just settled. Eshoff or 17:58:18 11 something like that that apparently -- 17:58:24 12 Q. Is that the case involving Mariner and 17:58:25 13 Ruby Schron? 17:58:28 14 A. No, this is a case -- the allegation 17:58:30 15 is actually -- one of the owners of the 17:58:35 16 institutional pharmacy was the son of an owner of 17:58:39 17 SNFs. It was Omnicare and -- I think it was 17:58:44 18 Eshoff or something like that, but it settled. 17:58:48 19 They announced the settlement in the paper 17:58:52 20 apparently several weeks ago, but it hasn't -- 17:58:57 21 the court hasn't -- 17:59:03 22 Q. Is that the Nehls case, N-E-H-L-S? I 17:59:05 23 think it's up in Indiana or something like that? 17:59:11 24 Minnesota? 17:59:12 25 A. Yes. It's Nehls and there's 17:59:13</p>	<p style="text-align: center;">225</p> <p>1 K. McAnaney 2 experience in evaluating this transaction? 18:00:27 3 A. Well, the same way I did in that. I 18:00:30 4 know the general principles of the Kickback 18:00:32 5 Statute. And I understand that in that, the 18:00:34 6 allegation in the settlement was -- it was being 18:00:41 7 negotiated in contemplation of sale, and putting 18:00:43 8 in favorable -- very favorable terms to the 18:00:48 9 pharm -- to the institutional pharmacy in 18:00:52 10 contemplation of the sale. 18:00:57 11 Q. And when you rendered your opinions, 18:01:02 12 were you able -- well, let me rephrase that. 18:01:15 13 When you rendered your opinions in 18:01:19 14 this case, you relied, I take it, on that 18:01:20 15 background and knowledge that you've just 18:01:23 16 described? 18:01:25 17 A. The opinions are based -- these are 18:01:27 18 not particular -- the arrangement is not 18:01:29 19 particular to institutional pharmacies -- the 18:01:35 20 violation. 18:01:40 21 Q. I understand. I'm trying to get at 18:01:43 22 is, it sounds like you're aware of two cases 18:01:45 23 involving the sale of a captive institutional 18:01:49 24 pharmacy. You're involved with one of them. 18:01:51 25 Is it fair to say that that knowledge 18:01:54</p>

<p style="text-align: right;">238</p> <p>1 K. McAnaney 2 which is infused with the determination as to the 18:14:36 3 party's intent; is that right? 18:14:40</p> <p>4 MR. MEYER: Objection, form. 18:14:42</p> <p>5 THE WITNESS: I'm not -- I'm not 18:14:43 6 sure I understand. 18:14:45</p> <p>7 BY MR. KRUEGER: 18:14:46</p> <p>8 Q. Let me try to rephrase that. 18:14:47 9 If, in fact, an AKS -- there's no, per 18:14:49 10 se, violation, whether there's an actual 18:14:50 11 violation turns on whether there is intent which 18:14:55 12 has been found towards this; correct? 18:14:58</p> <p>13 A. That is one of the elements that must 18:15:01 14 be found. 18:15:04</p> <p>15 Q. Right. Right. And there are others. 18:15:06 16 I understand that, but I'm focusing on the intent 18:15:07 17 issue. 18:15:11</p> <p>18 A. Is it possible to take a quick break? 18:15:11</p> <p>19 Q. Sure. 18:15:13</p> <p>20 MR. FRIEDMAN: Standby. The time 18:15:15 21 is 6:14. We're going off the record. 18:15:18 22 (Whereupon there was a brief 18:15:27 23 recess.) 18:15:28</p> <p>24 MR. FRIEDMAN: The time is 6:20. 18:21:12 25 We are back on the record. 18:21:16</p>	<p style="text-align: right;">240</p> <p>1 K. McAnaney 2 get referrals, and know that that's against the 18:22:21 3 law. I think that's probably -- you have to 18:22:27 4 both -- I mean, I think the -- the general is you 18:22:32 5 have to know that -- know that you're doing a bad 18:22:42 6 act and doing it anyway. 18:22:53</p> <p>7 Q. Purposely. And you spoke about 18:22:55 8 scienter, S-C-I-E-N-T-E-R, earlier; correct? 18:23:00</p> <p>9 A. Yes. 18:23:01</p> <p>10 Q. And so that means really, as I 18:23:02 11 understand it, the willful and knowing violation 18:23:03 12 of a statute; correct? 18:23:07</p> <p>13 A. Well, no. I think that there's -- I 18:23:10 14 think it has to be an unlawful act. It's not 18:23:13 15 quite -- at least generally it seems to me the 18:23:17 16 cases are a little vague on that. 18:23:20</p> <p>17 Q. What I was asking, you said the 18:23:23 18 government's position is. My question is, what 18:23:25 19 do you understand -- what was your position. In 18:23:28 20 order to violate the AKS, does a party have to 18:23:30 21 commit a willful and knowing act? 18:23:34</p> <p>22 A. They have to -- they have to engage in 18:23:38 23 an act that they know is unlawful. 18:23:41</p> <p>24 Q. So they have to purposely and 18:23:47 25 intentionally engage in prohibited conduct? 18:23:49</p>
<p style="text-align: right;">239</p> <p>1 K. McAnaney 2 BY MR. KRUEGER: 18:21:18</p> <p>3 Q. So in terms of an OIG Advisory 18:21:19 4 Opinion, one of the things that we were talking 18:21:22 5 about before the break was that the OIG will not 18:21:24 6 issue an opinion with respect to the party's 18:21:27 7 intent as it relates to an element of an AKS 18:21:29 8 violation; correct? 18:21:34</p> <p>9 A. That's correct. 18:21:35</p> <p>10 Q. And so then what I was starting to ask 18:21:36 11 you before the break, I understand there's not -- 18:21:42 12 there are no per se violations of the AKS; 18:21:45 13 correct? 18:21:48</p> <p>14 A. That's correct. 18:21:48</p> <p>15 Q. And so any violation which is found to 18:21:49 16 exist has to include a finding of intentional 18:21:54 17 conduct; correct? 18:21:58</p> <p>18 A. Correct. 18:21:59</p> <p>19 Q. And when we speak about intent in the 18:22:00 20 context of an AKS violation, it's the intent to 18:22:02 21 do what? 18:22:05</p> <p>22 A. That's a good question. I think the 18:22:09 23 government -- the government's position is you 18:22:11 24 have to just knowingly intend to do the act. So 18:22:14 25 knowingly intend to pay the remuneration, or to 18:22:17</p>	<p style="text-align: right;">241</p> <p>1 K. McAnaney 2 MR. MEYER: Objection, form. 18:23:52</p> <p>3 THE WITNESS: They have to 18:23:53 4 knowingly engage in unlawful conduct. 18:23:53</p> <p>5 BY MR. KRUEGER: 18:23:56</p> <p>6 Q. And in issuing Advisory Opinions, OIG 18:23:56 7 does not opine on that issue; correct? 18:24:02</p> <p>8 A. That's correct. 18:24:10</p> <p>9 Q. And I might have asked you this, but 18:24:11 10 why is it that OIG does not opine on that? 18:24:16</p> <p>11 MR. MEYER: Objection, form. 18:24:20</p> <p>12 THE WITNESS: Because the process 18:24:21 13 doesn't -- is not amenable to it. They 18:24:22 14 don't do investigations. 18:24:29</p> <p>15 BY MR. KRUEGER: 18:24:30</p> <p>16 Q. So what do they do? 18:24:30</p> <p>17 A. The Advisory Opinion process is they 18:24:32 18 basically review typically a proposed arrangement 18:24:35 19 that's described and represented to be true and 18:24:50 20 accurate that the requester wants an opinion on. 18:24:52 21 So they basically accept whatever the facts are 18:24:58 22 given to them as being true and accurate with 18:25:02 23 some exceptions. 18:25:09</p> <p>24 Q. So they effectively accept the facts 18:25:10 25 that the requester has put before them; correct? 18:25:14</p>

<p style="text-align: right;">290</p> <p>1 K. McAnaney 2 expertise in determining the intent of parties 19:28:35 3 which are superior to the expertise that a jury 19:28:38 4 has? 19:28:41 5 MR. MEYER: Objection, form. Can 19:28:42 6 you repeat the question, George, or can you 19:29:01 7 read the question back, please? 19:29:03 8 (Whereupon the reporter read back 19:29:04 9 the requested portion of the record.) 19:29:04 10 THE WITNESS: I'm more familiar 19:29:19 11 with the transactions and the industry, and 19:29:19 12 so in that extent, I may have. 19:29:23 13 BY MR. KRUEGER: 19:29:25 14 Q. So when a jury will be presented with 19:29:26 15 all the facts, it's your view that you have 19:29:30 16 superior knowledge to them in determining what 19:29:34 17 actually happened? 19:29:37 18 MR. MEYER: Objection, form. 19:29:38 19 THE WITNESS: That's not what I 19:29:39 20 said. 19:29:40 21 BY MR. KRUEGER: 19:29:40 22 Q. I thought you said you may have 19:29:42 23 superior knowledge because of your background and 19:29:43 24 knowledge of the facts. 19:29:46 25 A. I may have superior insight into a 19:29:48</p>	<p style="text-align: right;">292</p> <p>1 K. McAnaney 2 MR. MEYER: George, can we take a 19:31:20 3 quick break, please? 19:31:21 4 MR. KRUEGER: Sure. 19:31:22 5 MR. FRIEDMAN: Standby. The time 19:31:23 6 is 7:30. We're going off the record. 19:31:24 7 (Whereupon there was a brief 19:31:30 8 recess.) 19:31:32 9 MR. FRIEDMAN: The time is 7:35. 19:35:52 10 We are back on the record. 19:35:54 11 BY MR. KRUEGER: 19:35:55 12 Q. We were speaking before the break 19:35:59 13 about juries and the ability of a jury to 19:36:01 14 determine the facts as the finder of the fact. 19:36:05 15 There's a jury charge that you may not be 19:36:09 16 familiar with, but it's a Latin phrase, something 19:36:13 17 like "falsus in unum, falsus in omnibus," which 19:36:18 18 means basically if the jury finds someone 19:36:23 19 testified falsely in one area, they can if they 19:36:25 20 want find that the person testified falsely in 19:36:27 21 every other area. 19:36:29 22 Are you familiar with that? 19:36:31 23 A. Not particularly. 19:36:33 24 Q. But is it fair to say that that's a 19:36:34 25 common sense understanding of credibility, that 19:36:36</p>
<p style="text-align: right;">291</p> <p>1 K. McAnaney 2 party's intent. 19:29:50 3 Q. Now did you consider any exculpatory 19:29:56 4 facts in reaching the conclusion that some of the 19:30:00 5 people sitting around this table have committed a 19:30:02 6 violation of the AKS? 19:30:05 7 MR. MEYER: Objection, form. 19:30:06 8 THE WITNESS: Yes. 19:30:08 9 BY MR. KRUEGER: 19:30:08 10 Q. What were the exculpatory facts you 19:30:09 11 considered? 19:30:11 12 A. Well, the statements about regulatory 19:30:14 13 compliance. The -- I mean, I'm familiar with the 19:30:16 14 arguments that it was patient choice. I'm 19:30:23 15 familiar with the argument that the price didn't 19:30:25 16 change. 19:30:27 17 Q. What other facts did you consider that 19:30:32 18 were exculpatory? 19:30:34 19 A. I can't recall. Whatever were in 19:30:36 20 there, I took into account in making my 19:30:38 21 evaluation. 19:30:42 22 Q. Well, are all the facts that you 19:30:47 23 relied upon set forth in your opinion? Your 19:30:49 24 three opinions, actually? 19:30:52 25 A. I think so. 19:31:08</p>	<p style="text-align: right;">293</p> <p>1 K. McAnaney 2 if you find someone lacks credibility in one 19:36:39 3 area, you may conclude they lack credibility in 19:36:43 4 other areas as well; correct? 19:36:47 5 MR. MEYER: Objection, form. 19:36:48 6 THE WITNESS: I think someone 19:36:49 7 could find that. 19:36:50 8 BY MR. KRUEGER: 19:36:50 9 Q. So in terms of exculpatory evidence 19:36:51 10 that you focused on or didn't focus on, I know 19:36:54 11 that you concluded that the defendants had the 19:36:57 12 intent and the third-party defendants to commit a 19:37:01 13 felony. 19:37:03 14 Have you focused at all on the 19:37:06 15 plaintiffs' conduct in terms of the purchase and 19:37:08 16 sale and how the defendants reacted to what they 19:37:10 17 did? 19:37:13 18 A. No. 19:37:14 19 Q. You read Barry Sweet's testimony? 19:37:16 20 A. As I said, I read it, paid attention 19:37:19 21 to parts of it, and didn't pay much attention to 19:37:23 22 parts of it. 19:37:26 23 Q. Do you recall his testimony, that he 19:37:27 24 felt that a structure that was proposed by the 19:37:28 25 plaintiffs involving a return of AR would likely 19:37:32</p>

<p style="text-align: right;">294</p> <p>1 K. McAnaney 2 constitute bank fraud? 19:37:39 3 A. I recalled testimony about the 19:37:44 4 structure of the agreement, and a concern that 19:37:49 5 potentially it might. 19:37:53 6 Q. It could be viewed as bank fraud; 19:37:56 7 correct? 19:37:57 8 MR. MEYER: Objection, form. 19:37:57 9 THE WITNESS: I don't know that it 19:37:59 10 could. I didn't pay much attention. I 19:37:59 11 think someone raised it as potentially it 19:38:02 12 could be. 19:38:05 13 BY MR. KRUEGER: 19:38:06 14 Q. And did you also read the testimony of 19:38:07 15 Matt Ryan and Patrick Hurst at Houlahan? 19:38:08 16 A. I did. 19:38:12 17 Q. And do you recall if they testified 19:38:13 18 about that same topic? 19:38:14 19 A. No. 19:38:16 20 Q. Okay. Now you understand, of course, 19:38:17 21 that the sellers of PharMaster wanted to sell the 19:38:19 22 business; correct? It was a business goal that 19:38:22 23 they had at that time to sell their business; 19:38:26 24 correct? 19:38:27 25 A. It was a business -- 19:38:29</p>	<p style="text-align: right;">296</p> <p>1 K. McAnaney 2 Q. So then do you think the fact that the 19:39:25 3 sellers refused and demonstrably refused to 19:39:28 4 participate in what they thought was a bank fraud 19:39:35 5 speaks to their credibility -- speaks to their 19:39:39 6 exculpatory conduct in connection with the AKS? 19:39:42 7 MR. MEYER: Objection, form. 19:39:45 8 THE WITNESS: No, not necessarily. 19:39:47 9 BY MR. KRUEGER: 19:39:48 10 Q. No? 19:39:49 11 Do you think the fact that the 19:39:49 12 plaintiffs proposed a structure that constituted 19:39:51 13 bank fraud speaks to their credibility? 19:39:55 14 A. I don't know that they did. 19:39:57 15 MR. MEYER: Objection, form. Go 19:39:58 16 ahead. 19:40:01 17 THE WITNESS: I don't know that 19:40:02 18 they did. 19:40:02 19 BY MR. KRUEGER: 19:40:03 20 Q. Do you recall statements that the 19:40:04 21 buyers were looking to purchase cash with 19:40:07 22 borrowed money? 19:40:10 23 MR. MEYER: Objection, form. 19:40:12 24 THE WITNESS: No. 19:40:13 25 BY MR. KRUEGER: 19:40:13</p>
<p style="text-align: right;">295</p> <p>1 K. McAnaney 2 Q. Goal that they had at that time to 19:38:30 3 sell their pharmacy business; right? 19:38:32 4 A. Yes. 19:38:33 5 Q. And they also had a goal later than 19:38:34 6 that to sell their -- to sell the SNF business; 19:38:36 7 correct? 19:38:42 8 A. I think -- I don't think it was early 19:38:42 9 or later. I think they were trying to sell at 19:38:46 10 all times. 19:38:49 11 Q. And do you recall that the sellers 19:38:50 12 terminated the Letter of Intent with the buyers 19:38:54 13 because they were concerned that what the buyers 19:38:59 14 were doing in terms of the transaction would 19:39:03 15 constitute bank fraud? 19:39:05 16 MR. MEYER: Objection, form. 19:39:07 17 THE WITNESS: No, I'm not aware. 19:39:08 18 BY MR. KRUEGER: 19:39:09 19 Q. You don't recall that testimony? 19:39:12 20 A. No, I didn't. It's probably what I 19:39:14 21 skipped. 19:39:18 22 Q. You skipped that? 19:39:19 23 A. I skipped virtually everything dealing 19:39:19 24 with the subsequent purchase. I think I've said 19:39:22 25 that several times. 19:39:24</p>	<p style="text-align: right;">297</p> <p>1 K. McAnaney 2 Q. Since you skipped over that part of 19:40:17 3 the testimony, does it cause you at all to 19:40:18 4 re-think your opinions to know that the sellers 19:40:23 5 withdrew from the transaction because they were 19:40:28 6 concerned that the transaction could be seen as 19:40:31 7 bank fraud? 19:40:34 8 MR. MEYER: Objection, form. 19:40:35 9 THE WITNESS: Not particularly. 19:40:36 10 BY MR. KRUEGER: 19:40:37 11 Q. That doesn't bear, you think, on their 19:40:38 12 credibility? 19:40:40 13 MR. MEYER: Objection, form. 19:40:42 14 THE WITNESS: It's some evidence, 19:40:43 15 yes. 19:40:44 16 BY MR. KRUEGER: 19:40:44 17 Q. It's exculpatory evidence; correct? 19:40:45 18 MR. MEYER: Objection, form. 19:40:47 19 THE WITNESS: I need to know more 19:40:49 20 about it. Potentially it could be. 19:40:50 21 BY MR. KRUEGER: 19:40:54 22 Q. Now at the time the -- after the sale 19:41:18 23 of PharMaster, we know that the sellers continued 19:41:23 24 to operate the SNF's for about eight or ten 19:41:28 25 months; correct? 19:41:30</p>

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<p>1 K. McAnaney</p> <p>2 MR. MEYER: Objection, form. 19:55:31</p> <p>3 THE WITNESS: I do not. 19:55:33</p> <p>4 BY MR. KRUEGER: 19:55:33</p> <p>5 Q. Do you know whether or not he has 19:55:34</p> <p>6 manifested his intent with respect to the claim 19:55:35</p> <p>7 that the third-party defendants committed fraud? 19:55:39</p> <p>8 MR. MEYER: Objection, form. 19:55:43</p> <p>9 THE WITNESS: I don't recall. 19:55:44</p> <p>10 BY MR. KRUEGER: 19:55:44</p> <p>11 Q. If I were to tell you that Lou 19:55:45</p> <p>12 Scheiner is one of the two people that owns the 19:55:47</p> <p>13 plaintiffs' SNF's, would that refresh your 19:55:49</p> <p>14 recollection as to who he is? 19:55:51</p> <p>15 A. No. 19:55:53</p> <p>16 Q. Did you read in Bob Homchick's report 19:56:03</p> <p>17 that one of the things that he relied upon in 19:56:06</p> <p>18 concluding there was no intent was the subsequent 19:56:09</p> <p>19 conduct of the plaintiffs? In other words, 19:56:14</p> <p>20 conduct of the plaintiffs subsequent to the 19:56:16</p> <p>21 closing? 19:56:18</p> <p>22 A. I don't specifically recall. 19:56:22</p> <p>23 Q. Are you aware that one of the things 19:56:26</p> <p>24 that Bob Homchick relied upon was that 19:56:28</p> <p>25 approximately ten months after the lawsuit was 19:56:32</p>	<p>1 K. McAnaney</p> <p>2 asset or co-own it if he had any concern that 19:57:41</p> <p>3 Mike violated the AKS? 19:57:45</p> <p>4 MR. MEYER: Objection, form. 19:57:47</p> <p>5 THE WITNESS: I don't recall that 19:57:49</p> <p>6 specifically. 19:57:50</p> <p>7 BY MR. KRUEGER: 19:57:50</p> <p>8 Q. Without regard whether or not you 19:57:52</p> <p>9 recall it, does the fact that Lou Scheiner, one 19:57:54</p> <p>10 of the principals of the plaintiffs, does not 19:57:56</p> <p>11 believe that Mike D'Arcangelo committed any kind 19:57:58</p> <p>12 of fraud? Does that bear on your opinions at 19:58:02</p> <p>13 all? 19:58:04</p> <p>14 MR. MEYER: Objection, form. 19:58:05</p> <p>15 THE WITNESS: Not with respect to 19:58:06</p> <p>16 the anti-kickback violation that occurred 19:58:07</p> <p>17 before. 19:58:10</p> <p>18 BY MR. KRUEGER: 19:58:11</p> <p>19 Q. Well, the fact that ten months after 19:58:12</p> <p>20 filing a lawsuit claiming there was a violation, 19:58:14</p> <p>21 that he called up somebody and said, I want to do 19:58:18</p> <p>22 a joint venture with you; and that he since 19:58:21</p> <p>23 testified that he would not have made that phone 19:58:25</p> <p>24 call if he thought that person had committed a 19:58:27</p> <p>25 fraud, does that bear on your opinions at all? 19:58:29</p>
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<p>1 K. McAnaney</p> <p>2 filed and after Pete Licari and Mike D'Arcangelo 19:56:34</p> <p>3 were charged in the Complaint with committing an 19:56:39</p> <p>4 AKS violation, that Mike D'Arcangelo received a 19:56:42</p> <p>5 phone call from Lou Scheiner and a gentleman 19:56:46</p> <p>6 named Ron Ostroff, whose testimony you did not 19:56:48</p> <p>7 read; correct? 19:56:51</p> <p>8 A. Correct. 19:56:51</p> <p>9 Q. Do you recall that portion of 19:56:54</p> <p>10 Mr. Homchick's expert report? 19:56:57</p> <p>11 A. Not particularly as I sit here. 19:57:00</p> <p>12 Q. Okay. It might help refresh your 19:57:01</p> <p>13 recollection that the report recounts a 19:57:04</p> <p>14 conversation that Mr. Scheiner and Mr. Ostroff 19:57:08</p> <p>15 had with Mike D'Arcangelo, where ten months after 19:57:12</p> <p>16 the filing of the lawsuit, they called up Mike 19:57:16</p> <p>17 D'Arcangelo and sought his participation as a 19:57:18</p> <p>18 co-venturer or a manager of a 35 million-dollar 19:57:23</p> <p>19 asset in Pennsylvania. 19:57:26</p> <p>20 Does that refresh your recollection at 19:57:28</p> <p>21 all? 19:57:29</p> <p>22 A. Yes. 19:57:29</p> <p>23 Q. Okay. And do you recall that Lou 19:57:30</p> <p>24 Scheiner testified that he would not have asked 19:57:33</p> <p>25 Mike D'Arcangelo to manage a 35 million-dollar 19:57:37</p>	<p>1 K. McAnaney</p> <p>2 MR. MEYER: Objection, form. 19:58:31</p> <p>3 THE WITNESS: No, I don't think 19:58:32</p> <p>4 his -- what his view is at this point in 19:58:34</p> <p>5 time affects whether a crime was committed 19:58:37</p> <p>6 once before. 19:58:43</p> <p>7 BY MR. KRUEGER: 19:58:44</p> <p>8 Q. Even though he takes the position and 19:58:44</p> <p>9 states that he does not believe that Mike 19:58:47</p> <p>10 D'Arcangelo committed any kind of fraud, not just 19:58:49</p> <p>11 an AKS, but any kind of fraud -- 19:58:52</p> <p>12 MR. MEYER: Objection, form. 19:58:54</p> <p>13 BY MR. KRUEGER: 19:58:55</p> <p>14 Q. -- that does not bear on your opinion? 19:58:55</p> <p>15 MR. MEYER: Objection, form. 19:58:57</p> <p>16 THE WITNESS: No, it does not bear 19:58:58</p> <p>17 on my opinion as to whether there was a 19:58:59</p> <p>18 violation here. 19:59:01</p> <p>19 BY MR. KRUEGER: 19:59:02</p> <p>20 Q. So the fact that your own client 19:59:02</p> <p>21 disagrees with you does not cause you to -- does 19:59:05</p> <p>22 not cause you in any way to re-think your 19:59:09</p> <p>23 opinion? 19:59:12</p> <p>24 MR. MEYER: Objection. 19:59:13</p> <p>25 THE WITNESS: No, it does not. 19:59:13</p>